

Ephemeris Parliamentaria;  
OR  
A FAITHFULL  
REGISTER

Of the *Transactions* in Parliament, in the third  
and fourth years of the reign of our late  
SOVEREIGN LORD  
KING CHARLES:

Containing  
The severall *Speeches, Cases, and Arguments* of Law  
transacted between his MAJESTY  
and both Houses.

Together with the **Grand Mysteries** of the King-  
dome *then* in Agitation.

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*Lege historias, ne fias historia.*

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L O N D O N:

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T H E  
P R E F A C E.



One of the most lawfull wayes whereby man in some sort may be said to *revenge himself of the shortnesse of his life*, and extend the measure thereof to a larger proportion then nature allows him, is by the *studie of Historie*. For *Historie is the remembrancer of the time past*, it is the *monument generall* erected over actions long since dead and interred, acquainting such as read the Epitaph thereon with the most remarkable passages of the ages past: so that a *Dwarf* by the advantage of the ascent of *History*, may suddenly start up (if not a *Giant*) one of *competent stature* to oversee all transactions long before him.

But of all *Histories* none more pleasant or profitable then those of our *Native Countrey*, which, as it is an *Island*, and so a little entire world in it self, hath in all ages afforded as many *signall observables* as any content of ground of the same proportion, neither *Greece* nor *Italie* it self excepted, which indeed overmatch us not in *Histories*, but *Historians*. Otherwise if *workmen* might be had, as fair an *Edifice* might



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might be erected of *English affaires*, such the plenty, variety, and curiosity of materials concurring thereunto.

And truly I cannot but accuse the blame-worthy negligence of many able men, who under the pretended plea of modesty, and humble distrust of their own sufficiency, preferre rather to moulder away in obscuritie, then industriously to preserve both their own memory and the honour of their nation. And those also seem to me equally worthy of reproof, who *sharp-sighted* abroad, are little better then *blinded* at home; know the way from *Paris* to *Lions* better then from *London* to *York*; can give a better account from *Pharamond* to the last *French Lewis*, then from our *Lucius* to *King Charles*. A very preposterous knowledge, seeing *Historie* (like unto good mens charitie) is though not to end, yet to begin at home, and thence to make its methodicall progresse into *Forreign parts*.

Now of all *English Historie*, the greatest shame is to be ignorant in the *Accidents* of our own *Age* of nearest concernment unto our selves. Those *starres* which are *lowest* seem *lightest* unto us; yea a *candle* at hand illuminates more then a *torch* at distance. A man is most (as I may say) *morally edified* by reading such men and matters as are his own *contemporaries*. Chiefly, because therein not so subject to be deceived by partiality of reports, because not taking up so much upon trust, as conducted to his belief by his own eyes and eares *witnesses* of all *transactions*.

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The consideration of the *premises* hath principally moved me to the setting forth of this *work*: wherein I confesse rather *fidelitie* then *industry*, yet rather *industry* then any *wit* or *learning* hath been required. Some works resent too much of their *Authour*, frequently infusing his own *judgement* and *affections* clean through the contexture of his *writings*, to the great prejudicing of the *truth* and misguiding of his *Reader*. And this is likely to be the *Epidemicall disease* of the books in our *Age*, wherein all are so engaged in parties, that their *writings* will rather appear *pleadings* then *reports*. VVhat by generall error is falsely told of the *Jews*, that they are alwayes *crook-backed*, will be found most true of *Authours* of this age, that they are *crook-sided*, *warped* and *bowed* to the *right* or to the *left*; so hard it will be to find a *streight*, *upright*, and *unbiassed Historian*.

For mine own part, I can professe *integrity* herein, the only thing I can assume to my self in this work. And indeed I have had no occasion nor opportunitie to expresse my own *inclinations*, who have no *commission* to be an *Authour*, but a *Transcriber*.

There is an *Officer* in the *Exchequer*, who though sitting with the *Barons* on the *Bench*, hath no power to vote with them, nor interposeth his *judgement* as *decisive* in any *cause*, but observing silence in pleading, speaketh sometimes as to the regulation of the time how it passeth away. Such and no other my employment in this *Book*, being a *true tell-time* (and no more) to *marshall* the *speeches* in *due order*, and to



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acquaint the *Reader* with the *day* of the *moneth* when they were spoken; which done, my task is performed.

The Book containeth the *transactions* of the *Parliament tertio & quarto Caroli*. A distance of time of fit proportion for the *Presse*, not too late nor too soon: not so farre off as that the footsteps of truth are worn out, as in some ancient stories, where the most cunning Hunters are at a losse; nor yet so near that the heels of truth ought to be feared; though he hath but a servile soul who overvalueth his own safety in such cases to the poysoning of posterity with a falshood.

Here may one behold the severall *traverses* of *State* betwixt the *upholders* of the *Royall Prerogative* & the *Afferters* of the *Subjects Liberties*. The former endeavoured to support (and perchance to enlarge) the *Kings Prerogative*, how in some cases it is too high to come under the roof of the *Law*; and the discretion of the *Sceptre* as *Guardian* for the generall good of the *Commonwealth*, must be intrusted on some emergencies with the managing of its own might. And seeing *Crownes* commonly keep what they once catch, loath to abate a whit of that power invested in them, at leastwise exercised by them; no wonder if the *Courtiers* stickled for their *Master* his right, and as the appurtenances, were zealous for that Power and Honour on whom they depended.

On the other side the *Afferters* of the *Subjects Liberties*, *Trustees* for the *Countreys good*, engage earnestly

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neftly to retrench the *Prerogative* within the known limits of *Law*, that fo *Subjects* may be at a certainty how to fquare their *loyalty* and *obedience*. For *Allegiance* is willingly and cheerfully paid, where there is a *sure* and *standing Rule* whereto *Sovereigns* commands and *Subjects* duty is to be conformed. Otherwise their loyalty flatteth and deadeth by degrees, when expofed to an unbounded *Arbitrary power*, fo that they never know an end of their own obeying, but are in daily fear of new preffures from a lawleffe power, whole pleafure is all the reason of impofing them. Besides, *unlimited power* in a *Prince* carrieth in it felf a ftrong temptation to *Tyranny*, and *mortall man* his *corruption* is fcarce to be trusted with fo great a command for fear of abufing thereof.

Now although in this *Parliament* thefe two *Parties* are plainly to be difcovered, yet the judicious reader will obferve that there was as yet leffe eagerness & more moderation in either party, matters not being then heightened with fuch mutuall animofities as fince we have beheld. Yea it feems that the fins of our *Nation* began even then to cry fo loud, that the two *Parties* in *Parliament* could not diftinctly hear each other fo as effectually to underftand one another, difturbed by the *clamorous* and *obftreperous noife* of *English wickedneffe*, which began to cry aloud for vengeance on a *wanton nation*, even to the abrupt breaking off of the *Parliament*.

WVe have had no other design in the *edition*  
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hereof then the generall good, hoping that *Readers* of all sorts may gain benefit thereby. Yea such *young folk* whose short capacities as yet are unable to reach the policie and *State part* in these pieces, may better themselves by the very *language* and *expressions* therein. Here may they observe the variety of eloquence in severall persons, some large, copious and exuberant; yet not flashy, empty and dilute: some concise, piccant and sententious; yet not involved, dark and obscure: some participating of both, which in my apprehension is the best kind of *Orations*.

However, let not any think that all the *Gentlemen* of *able parts* assembled in the *Parliament* are registered in this *book* by their particular service to their *Countrey*, seeing only such are entred herein, who *made set, studied, and premeditated Orations*. Many *Worthies* there were in that place who only were dexterous at short and quick returns, and which retrieved long debates with some short and compendious answer very effectually to the purpose. For sometimes a *Stillette blow* may give a more deep and deadly wound then the point and edge of the sharpest *Sword*, which requireth more time and room for the managing thereof. Yea many a discreet gentleman, who, after long traversing of matters, judiciously bestowed his *Yea* or *Nay* in the right scale thereof to weigh the balance down when in *Æquilibrium* of matters of high importance (though otherwise not haranguing it in large discourses) might

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might return to his countrey with satisfaction to his conscience that he had well deserved thereof.

VVe are confident also that the *Students* of the *Law* may advantage themselves by severall *Cases* here largely reported. And here all care hath been used in comparing *Records* herein cited with the Originalls; though we dare not avouch it clear from all mistakes, the greatest industry and exactnesse being subject to fallibilitie herein. VVe have seen the *Reports* of late *Judges* in print, and could point at *Erratas* therein: which we speak not to accuse them, but excuse our selves if some faults be found in our quotations.

As for the Gentlemen whose speeches are herein related, they are either dead or still surviving. For the former we hope we have no cause to ask pardon of their memories, and fear not their ghosts disquieting us for offering any injury unto them, or that we shall fall into the disfavour of their Heires for misrepresenting any thing for their fathers disadvantage.

As for such who are still alive, we appeal unto them, making them the Judges of our integrity herein. True it is that the dragge-net of no diligence can be of that capacity, nor can it be so advantageously cast, as to catch and hold all particulars uttered in a long speech; *Minums* will get through the holes thereof: and there be those *minutiae* in a speech which will escape the attention of the quickest eare, and transcription of the speediest hand. But  
such



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such things are lost without any losse as to the *essentials* of the matter: and here all things of concernment are faithfully represented.

And may the *Reader* be pleased to take notice that this *Book* is no *Monochord*, or *Instrument* of a *single string*, no nor is it a *single Instrument*; but the exact result of many collections. We have compared *varias lectiones*, or rather *varias auditiones*, the copies as they have been taken by severall *Auditours*. Sometimes one *copie* charitably relieved another, nor was it long before the defects of the same *copie* were supplied out of that other *transcription*. Thus neither is there being for *Books*, nor *living for men* in this world, without being mutually beholding one to another; & he who lends to day, may be glad to borrow to morrow.

One thing let me mind the *Reader*, that it may move him to a *publick* and *communicative Spirit*, not *enviously* to engrosse to himself what may do good to others. Some *Gentlemen*, *Speakers* in this *Parliament*, imparted their *Speeches* to their *intimate Friends*; the transcripts whereof were multiplied amongst others (the penne being very procreative of issue in this nature:) and since it hath happened that the *Gentlemens Originalls* have in these *troublesome* times miscarried, yet so that the *fountain* (as I may say) being dried up, hath fetch't this water from the *channell*, & they have again supplied their losses from those to whom they civilly communicated a *copy* of their paines. Thus none are losers in *fine*, by making others sharers in their endeavours.

And

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And now give me leave to say, that the *History* of the *Parliament* represented in this *Book* is *fundamentall* to the *History* of our *Times*, and what valiant penne soever dare undertake the writing thereof, it must lay its *ground-work*, and take its *rise* from this *Parliament*. Herein were virtually contained the seeds of all those *troubles* which since the heat of *anger* hath ripened to the full *height* and *breadth* thereof. For what is said of *Rebeckah*, that *Twinnes* were in her bowels, which made their *Mothers wombe* the *field of their fight*, wherein their *unborn Infancy* gave an *Essay* of that *Antipathy* which would be continued betwixt them when arrived at riper yeares: the same was true here, where the opposition betwixt two parties was begun with much violence and impetuousnesse.

Yet let not the *similitude* be uncharitably improved beyond my intent, as fixing the *odious character* of *Esau* on either of them, who hope and believe that both of them might be *Jacobs*, at the first propounding plain, pious, and peaceable ends unto themselves. Yea this may say to *ensuing Parliaments*, as *Aeneas* in the *Poet* to his sonne,

*Disce puer virtutem ex me verumque laborem,  
Fortunam ex aliis*—————

Nor can any true *Patriot* ever desire that men more honourable, more knowing, and able in all faculties of policie, law, and generall learning,



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I may adde also more loving to, or beloved of their Countreys, ever should meet in *Parliament* ; who hence may take their pattern of many worthy and excellent vertues in Statists. But oh, let them farre exceed this in happinesse ; the abrupt end whereof was the beginning of all our miseries.

T. F.

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The

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The K I N G S Speech 17. March 1627.

*My Lords and Gentlemen,*



*Hese Times are for action, wherefore for examples sake I meane not to spend much time in words, expecting accordingly that your (as I hope) good resolutions will be speedy, not spending time unnecessarily, or (that I may better say) dangerously ; for tedious Consultations at this conjuncture of time are as hurtfull as ill Resolutions.*

*I am sure you now expect from me both to know the cause of your meeting, and what to resolve on : yet I think there is none here but knowes that common Danger is the cause of this Parliament, and that Supply at this time is the chief end of it ; so that I need but point to you what to do. I will use but few perswasions ; for if to maintaine your owne advises, and as now the case stands, by the following thereof the true Religion, Lawes and Liberties of this State, and the just defence of our true Friends and Allies, be not sufficient, then no eloquence of Men or Angels will prevaile.*

*Only let me remember you that my duty most of all, and every one of yours according to his degree is, to seek the maintenance of this Church and Common-wealth : and certainly there never was a time in which this duty was more necessarily required then now.*

*I therefore judging of a Parliament to be the antient, speediest & best way in this time of common Dan-*

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ger, to give such supply as to secure our selves, and to save our Friends from imminent ruine, have called you together. Every man must do according to his conscience. Wherefore if you (which God forbid) should not doe your duties in contributing what the State at this time needs, I must in discharge of my conscience use those other meanes which God hath put into my hands, to save that which the follies of particular men may hazard to loose.

Take not this as a threatning, for I scorn to threaten any but my equals; but an admonition from him that, both out of nature and dutie, have most care of your preservations and prosperities: and (though I thus speak) I hope that your endeavours at this time will be such, as shall not onely make me approve your former Counsels, but lay on me such obligations as shall binde me by way of thankfulness to meet often; for be assured that nothing can be more pleasing to me, then to keep a good correspondence with you.

I will onely adde one thing more, and then leave my Lord Kceper to make a short paraphrase upon the Text I have delivered you; which is, to remember a thing to the end we may forget it. You may imagine that I came here with a doubt of success of what I desire, remembring the distractions at the last meeting: but I assure you that I shall very easily and gladly forget and forgive what is past, so that you will at this present time leave the former waies of distractions, and follow the counsell late given you, to maintain the unity of the Spirit in the bond of Peace.

*The Lord Keeper Coventry's Speech 17. March*  
1627.

My *Lords*, and you the *Knights, Citizens, and Burgeses* of the  
House of *Commons*,

**I**F I had been delighted in long speaking, yet the example and commandment of his *Majestie* hath been more then enough to refrain the superfluitie of that humour, but here is yet more; For that short and excellent compacted Speech which you have heard from his *Majestie*, begins with a reason, It is a time for action and not for speech. Examples and Command master the Will, and Reason the Understanding: and therefore you may expect nothing from me but brevity.

You have heard the matter already, and I doubt not but with reverence, as the weight and authority requires, you have imprinted it in your mindes: and the matter being known, long speeches from me were but babling to beat the aire.

Yee are here in *Parliament* by his *Majesties* writ and royall command, to consult and conclude of the weightie and urgent businesse of this Kingdome. VVeighty it is and great, as great as the honour, safety and protection of Religion, King and Country, and what can be greater? Urgent it is: It is little pleasure to tell or think how urgent, and to tell it with circumstances were a long work; I will but touch the summe of it in few words.

The *Pope* and House of *Austria* have long affected, the one a Spiritual, the other a Temporal *Monarchie*: and to effect their ends, to serve each others turn, the House of *Austria*, besides the rich and vast Territories of both the *Indies* and in *Africa* joined together, are become Masters of *Spain* and *Italy*, and the great country of *Germany*. And although *France* be not under their subjection, yet they have endeavoured all about him: the very bowells of the Kingdome swaied by the *Papish* faction, they have gotten such a part and such interest in the Government, that under pretence of Religion, to root out the *Protestants* and our Religion, they have drawn the King to their adherence so farre, that albeit upon his *Majesties* interposition by his Ambassadors, and his engagement of his royall word, there was between the King and his Subjects Articles of agreement, and the Subjects were quiet, whereby his *Majestie* interested in that great Treaty, was bound to see a true accomplishment; yet against that strict alliance, that Treaty hath been broken, and those of the Religion have been put to all extremity, and undoubtedly will be ruinated without present help: so as that King is not onely diverted from assisting the common Cause, but hath been misled to engage himself in hostile acts against our King, or other Princes, making way thereby for the House of *Austria*, to the ruine of his own and other Kingdomes.



Other Potentates that in former times did ballance and interrupt the growing greatnesse of the House of *Austria*, are now removed and diverted. The *Turk* hath made peace with the *Emperour*, and turned himself wholly into warrs with *Asia*; the King of *Sweden* is embroiled in a warre with *Poland*, which is invented by *Spanish* practices, to keep that King from succouring our part; the King of *Denmark* is chased out of his Kingdome on this and on that side the *Sound*, so as the house of *Austria* is on the point to command all the Sea-coasts from *Danzick* to *Emden*, and all the Rivers falling into the Sea in that great extent, so as besides their power by Land, they beginne to threaten our part by Sea, to the subversion of all our State.

In the *Baltique* Sea they are providing and arming all the ships they can build or hire, and have at this time their Ambassadors threatening at *Lubeck* to draw into their service the *Hans-Townes*; whereby taking from us and our neighbours the East-land trade, by which our Shipping is supplied, they expect without any blow given to make themselves masters of the Sea. In those Western parts by the *Dunkerkers*, and by the now *French* and *Spanish* Admirall, to the ruine of Fishing, of infinite consequence both to us and the *Low Countries*, they infest all our coast, so as wee passe not safely from port to port. And that Fleet which lately assisted the *French* at the Isle of *Ree*, is now preparing at *St. Andrea*, with other ships built in the coast of *Biscay* to re-inforce it, and a greater Fleet is making ready at *Lisbon*, where besides their own, they do serve themselves upon all strangers bottoms coming to that coast for trade. And these great preparations are no doubt to assault us in *England* or *Ireland*, as they shall finde advantage, and a place fit for their turn.

Our friends of the *Netherlands*, besides the feare that justly troubles them lest the whole force of the *Emperour* may fall down upon them, are distracted by their Voyages into the East, which hath carried both men and money into another world, and almost divided them at home.

Thus are we even ready on all sides to be swallowed up; the *Emperour*, *France*, and *Spain* being in open warr against us, *Germany* over-run, the King of *Denmark* distressed, the King of *Sweden* diverted, and the *Low-Country-men* disabled to give us assistance. I speak not this to increase fear unworthy of *English* courages, but to presse to provision worthy the wisdom of a *Parliament*. And for that cause his Majestie hath called you hither, that by a timely provision against those great imminent dangers, our selves may be strengthened at home, our Friends and Allies encouraged abroad, and those great causes of feare scattered and dispelled.

And because in all warlike preparations Treasure bears the name, and holds the semblance of the nerves and sinewes, and if a sinew be too short or too weak, if it be either shrunk or strained, the part becomes unusefull: it is needfull that you make a good and timely supply of treasure, without which all counsells will prove fruitlesse. I might  
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preſſe many reaſons to this end, I will but name few.

First for his *Majeſties* ſake, who requires it : great is the duty which we owe him by the law of God, great by the law of Nature and our own Allegiance, great for his own merit, and the memory of his ever bleſſed Father. I do but point at them, but me thinks our thoughts cannot but recoyle on our conſideration, touched by his Majeſtie, which to me ſeemes to ſound like a Parliamentarie part or Covenant.

A Warre was adviſed here, Aſſiſtance profeſſed, yea and proteſted here ; I do but touch it, I know you will deeply think on it, and the more for the example the King hath ſet you, his Lands, his Plate, his Jewells he hath not ſpared to ſupply the War ; what the People hath proteſted, the King for his part hath willingly performed.

Secondly for the *Cauſe* ſake : it concernes us in Chriſtian Charity to tender the diſtreſſes of our Friends abroad, it concernes us in honour not to abandon them that have ſtood for us ; and if this come not cloſe enough, you ſhall finde our Inter-eſt ſo woven and involved with theirs, that the *Cauſe* is more ours then theirs. If Religion be in perill, wee have the moſt flourishing and orthodoxe Church ; if Honour be in queſtion, the ſteps and monuments in former ages will ſhew that our Anceſtours have left us as much as any Nation ; if Trade & Commerce be in danger, we are Iſlanders, it is our life : all theſe at once lye at ſtake, and ſo doth our ſafety and being.

Laſtly, in reſpect of the manner of his Majeſties demand, which is in *Parliament*, the way that hath ever beſt pleaſed the ſubjects of *England* : and good cauſe for it ; for Aides granted in Parliament work good effects for the People ; they be commonly accompanied with wholeſome Lawes, gracious Pardons, and the like : Beſides, juſt and good Kings finding the love of their people, and the readineſſe of their ſupplies, may the better forbear the uſe of their Prerogatives, and moderate the rigour of the Lawes towards their Subjects.

This way, as his Majeſtie hath told you, he hath choſen not as the onely way, but as the fitteſt ; not as deſtitute of others, but as moſt agreeable to the goodneſſe of his own moſt gracious diſpoſition, and to the deſire and weale of his people. If this be deferred, Neceſſity and the Sword of the Enemy make way to the others. Remember his Majeſties admonition, I ſay, remember it. Let me but adde and obſerve Gods mercy towards this land above all others : the torrent of Warre hath overwhelmed other Churches and Countries, but God hath hitherto reſtrained it from us, and ſtill gives us warning of every approaching danger to ſave us from ſurprize. And our gracious Sovereign in a true ſenſe of it calls together his High Court of *Parliament*, the lively representation of the wiſdome, wealth, and power of the whole Kingdome, to joyn together to repell thoſe hoſtile attempts, which have diſtreſſed our Friends and Allies, and threatned our ſelves.

And therefore it behoves all to apply their thoughts unto Counſell and Conſultations worthy the greatneſſe and wiſdome of this Aſſembly,



sembly, to avoid discontents which may either distemper or delay, and to attend that *unum necessarium*, the common Cause, propounding for the scope and work of all the debates, the generall good of the King and Kingdome, whom God hath joyned together with an indissoluble knot, which none must attempt to cut or untie. And let all by unity and good accord, endeavour to pattern this Parliament by the best that have been, that it may be a pattern to future Parliaments, and may infuse into Parliaments a kinde of multiplying power and faculty, whereby they may be more frequent, and the King our Sovereign may delight to sit on this Throne, and from hence to distribute his graces and favours amongst his people.

His *Majestie* hath given you cause to be confident of this you have heard from his royall mouth, which neverthelesse he hath given me expresse command to redouble ; If this Parliament by their dutifull and wise proceedings shall but give this occasion, his *Majestie* will be ready, not onely to manifest his gracious acceptation, but to put out all memory of those disasters that have troubled former Parliaments.

I have but one thing to adde, and that is, As your consultations be serious, so let them be speedy. The Enemy is beforehand with us, and flies on the wings of Successe : we may dallie and play with the houre-glasse, that is in our powers, but the houre will not stay for us, and an opportunity once lost cannot be regained. And therefore resolve of your Supplies, that they may be timely and sufficient, serving the occasion. Your Counsel, your Aid, all is but lost, if your Aid be either too little or too late : And his *Majestie* is resolved that his affaires cannot permit him to expect it overlong.

And now having delivered what his *Majestie* hath commanded me concerning the cause of this Assembly, his *Majestie* willeth that you of the House of *Commons* repaire to your owne House, to make choice of a *Speaker*, whom his *Majestie* will expect to be presented unto him on *Wednesday* next at two of the clock.

*The Speaker Sir John Finches Speech,*  
March 19. 1627.

Most Gracious Sovereign,

**Y**Our obedient and loyall Subjects, the *Knights, Citizens and Burgeses* by your royall Summons here assembled, in obedience to your gracious direction, according to their antient usage and privilege, have lately proceeded to the choice of a *Speaker*, and, (whether sequestering their better Judgements for your more weighty affairs, or to make it known that their honour and wisdom can suffer neither increase nor diminution by the value or demerits of any one particular Member, in what place soever serving them) omitting others of worth and ability, they have fixed their eyes of favour and affection on mee.

Their long knowledge of my unfitness every way to undergo a charge of this important weight and consequence, gave mee some hope they would have admitted my just excuse: yet for their further and clearer satisfaction, I drew the curtains, and let in what light I could upon my owne inmost thoughts, truly and really discovering to them what my self best knew, and what I most humbly beseech your royall *Majestie* to take now into consideration; that of so many hundreds sitting amongst them, they could have found few or none whose presentation, to your *Majestie* would have been of lesse repute, or advantage to them: For, *& impeditioris lingua sum*, and the poore experience I have of that royall Assembly is so ill balanced with true judgement, that every gust and wave hath power on me; whereby I shall not onely suffer in my own particular, but (which I apprehend with much more care and sorrow) prejudice their common Interest.

Wherefore, dread and dear *Sovereign*, as low as the lowest step of your royal throne I humbly bend, appealing to your great & sovereign judgement for my discharge from this so unequall a burthen imposed on me: most humbly and earnestly beseeching your most excellent *Majestie*, for the honour of that great Councell, and the better digestion of publick Services there, and withall to avert so ill an *Omen* as the choice of Me in the beginning of a *Parliament*, ordained (I hope) for the joy of our own, and the envy of other Nations, that by your gracious Command the House may re-consult, and settle their better thoughts on some more worthy their election, and your *Majestie's* approbation.

*The*



*The Lord Keeper Coventry's Reply.*

*Mr. Speaker,*

**H**is *Majestie* with a most gracious care and princely attendance hath heard your humble excuse: he knowes well the importance of your place, but your ability to discharge it he approves, and commends the election of the House of *Commons*; and therein receives the more content, because they have followed the light taken from himself, who formerly made choice of you to serve in a place of Trust both about himself, and his royall Consort.

The *Omen* cannot be ill, and the People so readily follow him whom God hath ordained to go in and out before them. And therefore knowing your tackling to be strong, and finding your saile moderate, and not over-born, his *Majestie* doth doubt neither gust nor wave to endanger your passage. But since you are duely chosen, his *Majestie* counsell and commands, that unto your humility you adde resolution and courage: they stand well together, and being well joyned, they will arme all your abilities to that great Imployment of service to your King and Countrie, which as the *Commons* by their uniforme voice have put upon you, so his *Majestie* by his royall approbation doth girt unto you, and settle you *Speaker*.

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*The*

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*The Speaker Sir John Finches Reply.*

**I**T is now no time nor manners longer to dispute with my Lord the King, but with all joy of heart and alacrity humbly and thankfully to meet so great a favour from the best of Masters and the best of Men. Therefore first, I lift up my heart to him that sits on the Throne of heaven, *per quem Principes imperant & Potentes decernunt justitiam*, humbly begging at his hands, that made the tongue, to give me speech, and that framed the heart of man, to give me understanding; for I am but as Clay in the hands of the Potter, and he will mould me for honour or dishonour as best seemes good unto him. Next, I bow my knees unto your most excellent *Majestie* in all humble and hearty acknowledgement of this, and many other your great and gracious Favours.

The truth of mine heart, full of zeale and duty to your *Majestie* and the publike as any mans, quits me from all feare of running into wilfull and pregnant errors; and your *Majestie's* great goodnesse, of which I have been so large a partaker, gives me strong assurance that, having by your gracious beames drawn me up from earth and obscurity, you will so uphold me by a benigne and gracious interpretation of all my words and actions, that I fall not down again like a crude and imperfect vapour, but consume the remainder of my dayes in the zeal of your *Majestie's* service.

This great and glorious Assembly, made perfect by your royall presence, like a curious Perspective, the more I behold it, with the more joy and comfort I finde a lively representation of that true happinesse, which under your *Majestie's* gracious government we all enjoy. A better tongue were fitter to expresse it; but a rich Stone retaines his value, though ill set.

Here in the fulnesse and height of your Glorie (like the Sun in the exaltation of his Orbe) sits your most excellent *Majestie*, the soveraigne *Monarch* of this famous *Isle*, in a Throne made glorious by a long succession of many and great *Princes*. A meditation worthy our better thoughts, that we live neither enthralled to the fury of the giddy-headed multitude, nor yet to the distracted wills of many Masters, but under the command of a King, the stay and strength of a People; one (as *Homer* saith well of a King) *πολλῶν ἀνδρῶν ἀλλων*, not to be laid in common ballance with other men: for Kings know no other Tenure but God's service, and their value it is onely tried at his Beam: whence the Poets said, the Parents of the first Kings were *Cælum & Terra*, Divine institution and Humane approbation.

Besides that it is a Sovereigntie also hereditarie, which makes the Common-wealth the King's care, as that which is the King's own Patrimony, and the inheritance of his Children; when elective



Monarchies quickly runne to ruine, and are commonly made poor by the enriching of several Families.

On your right hand are the reverend, religious and learned *Prelates*, the Lights of the *Church*, fit to be set in golden Candlesticks, and not made contemptible by Paritie or Povertie : lively *Idea's* of that blessing above the rest, which by God's great goodnesse and your *Majestie's* great pietie this Realme enjoyes, the libertie of the Gospell, and the free profession of God's true Religion.

Your *Majestie* passed the fierie tryall in *Spaine*, and gave us then assurance that your faith was built on that rock against which the gates of hell shall never prevaile. Since your coming to the Crowne, by your royall Edict you have banished those Incendiaries of *Rome*, the *Priests* and *Iesuites*, enemies to our Church and State ; so as now they are either gone, or lurk in corners like the sonnes of darknesse. You have given life to the Lawes against *Recusants*, and by your own exemplarie pietie have drawn more then you have compelled to come to Church. *Euge, ingredi, ut impleatur domus mea*, was his command that made the great Feast, and is the duty of Magistrates.

And certainly, dread *Sovereigne*, true Religion will ever be a target to them that are a buckler to it : No cement so strong to hold your Subjects hearts together in their true obedience.

Our Religion never bred a *Clement*, or a *Ravallack* : and that execrable *Villany* never to be forgotten here, when all of us (*horresco referens*) in an instant should have been turned into ashes, and those scattered in the winde, was a Monster could never have been ingendred, but by the *Diuel* or the *Iesuites*.

On your left hand sit your *Nobles*, the Lights of Honour, full of courage and magnanimitie, yet in right distance between Crown and People, neither over-shadowing the one, or oppressing the other.

Before your Throne, like the twelve Lyons under *Solomon's* Throne, sit the Lights of Justice, your grave *Judges* and Sages of the Law, learned and just as many Ages have known, and learning justice by your example.

Our Lawes, as excellent as they are, (I am sure no humane Lawes excell them, nor could so well suite with the constitution of this People) were they in the power of corrupt or ignorant men (I know not which were worse, for one will perhaps oftner erre then the other bribe) Justice could never keep her right chanel, nor runne cleare, as in your *Majestie's* reigne it ever hath.

I must not forget the other Lights, the *Knights*, *Citizens*, and *Burgeses*, the Representative of their Estate, who although they move lower and at more distance from your royall Person, yet  
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(I am confident) will ever be found constant to the Poles of Love and Loyaltie.

'Tis a gracious Favour of your *Majestie* and our former Kings I have often thought on, that when both these Houses are humble suitors for any thing, they are never denyed; *Le Roy s'aviserà*, The King will advise of it, is the greatest denyall. And I assure my self your *Majestie* shall finde all your Subjects so full of dutie to your Crown, and of true and loyall affection to your royall Person, that you shall never have cause to think your gracious Favours ill bestowed on them.

The Union of Hearts, *Sir*, is a greatnesse beyond that of the Kingdome, to which you are Heire.

*Et penitus toto divisos orbe Britannos,*

it is a Name of advantage to this *Island*, if the Division be not amongst our selves: which the God of Unitie for his mercies sake forbid, and so knit our Hearts in love one to another, and all of us in duty and loyalty to your most excellent *Majestie*, that this renowned *Island* perish not by our Distractions, but may ever flourish, and be like *Ierusalem* the Citie of God, where his Name may be for ever honoured.

Great and glorious have been the Actions of your royal Predecessours, yet greater remaine for your *Majestie*, and most of theirs attend you for their perfection.

The first *Christian King* of *Europe*, the first that abated the swelling pride of *Rome* by banishing his usurped power, and God's true Vice-gerent, the first that established the true Religion now profest, were all Kings of *England*, and the last a young one.

Queen *Elizabeth* was a woman, yet *Spaine* hath cause to remember her: the *Protestants* of *France* and the *Low-Countries* will never forget her. And were *Henry* the Great alive, he would say, That in requitall of the love of this Kingdome shewed him, he hath sent us one of his owne Loynes, your royall Consort, our most gracious *Queen*, to propagate these blessings to us and our posteritie for ever. Your royall *Father* (of ever blessed and famous memorie) had a Reigne like *Solomon's*; for Religion, no man knew more a lustre or advantage to him, this Age shall deliver it to the next, and all Ages shall see it in his Kingly Workes.

But while under his glorious Reigne we abode in peace and plenty, our hands had forgot to warre and our fingers to fight, till at last by your Princely mediation, upon the humble suite of both these Houses, the two Treaties were dissolved, and a foundation laid for your *Majestie* to restore us to our antient and Military honour; which I doubt not will quickly be.



*Eritis sicut Dii*, was the Serpent's Counsell, and ruined Mankinde: nor is it fit for private men (much lesse for me) to search into the Counsells or Actions of Kings. Onely, *Sir*, give me leave from an heart full of zeale to your glorie and greatnesse, to say to your *Majestie*, the Times require you, Religion calls upon you to goe on with that Kingly Courage you have begunne, till the state of *Christendome* be settled in the right Balance again.

We see how the *Eagle* spreads his wings in *Germany*, reaching with his talons as farre as the *Sound* and *Baltick* sea: *Denmark* and *Sweden* in danger of utter ruine by seizing: the *Electors*, the choice of the *Empire*, invested in a manner solely in the House of *Austria*: Our Religion in *France* and every where never so neare a period. And we know who it is for whom all this works; he of whom the boast is made, *Allà qui Monarqui nasciendo d'el monendo*, who by the ruine of us and our Religion will make a new *Zodiack*, and draw an *Ecliptick* line through the East and West *Indies*. But he that sits on high will in his good time laugh them to scorne; and, as that wise Woman said to King *David*, God will make to my Lord the King a sure house, if my Lord shall continue to fight the battels of *Iehovah*: and let all *England* say, *Amen*.

I have presumed too farre upon your royall Patience, and therefore I will conclude with a few words for them that sent me, who are humble suitours to your excellent *Majestie*,

First, for our better attending the publick and important services, that our selves and our necessary Attendants may be free, both in our persons and goods, from all arrests and troubles, according to our ancient priviledge and immunities.

Next, that, since that in all great Councells where difference of opinion is, truth is best discovered by free debates, your *Majestie*, according to our like ancient use and priviledge, will be graciously pleased to allow us liberty and freedome of speech, and I assure my self we shall not passe the latitude of duty and discretion.

That upon all occurrences of moment, fit for resort to your owne person, your *Majestie*, upon humble suit, at your best leisure, will vouchsafe us access to your royall person.

And

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And lastly, that all our proceedings being lodged in your royall heart with belief of our zeal and loyalty, we may reap the fruits of it, by your *Majestie's* gracious and favourable interpretation.

One word more I humbly begg for my self, That though it be the beginning of a *Parliament*, I may now and ever enjoy your *Majestie's* most gracious and generall free Pardon.

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*The Lord Keeper Coventry's second  
Reply.*

Mr. Speaker,

**H**IS *Majestie* with no lesse content then attention hath heard your learned Discourse : he observes your beginning with his gracious incouragement and advice, not forsaking your humble modestie, but adding to it thankfulness, alacrity, and joy of heart; a just and right temper.

He observes you derive these aright, first, from the Throne in heaven : he lookes thither with you, and joynes in prayer, that both you and all this Assemblie by that Divine hand and power be moulded, and procured for the honour, safety and good of the *Church* and *Kingdome*. Next, you apply your self to the Throne on earth : his *Majestie* doth graciously accept your protestations of the truth of your heart, the fulnesse of your zeale and duty to his *Majestie* and the Publick : he believes it, and that not in you alone, but in all this Asseimbly ; so that you are secure not onely from wilfull and pregnant errors, but from doubt of sinister interpretation.

My Lord the King is as an Angel of God, of a quick, of a noble and just apprehension ; he straines not at gnats, he will easily distinguish between a vapour and a fogg, between a mist of error and a cloud of evill ; right he knowes, if the heart be right, *Out of the abundance of the heart the mouth speakes.*

You proceed to a survey of the lustre of this great and glorious Assemblie, and in that, as in a curious Crystall, you observe the true happinesse which we all here enjoy. You have distributed and divided aright, and whosoever sees it otherwise hath an evill eye, or a false glasse. We have enjoyed it long, through the happy meanes of gracious and good Princes ; and the way to enjoy it still, is to know and heartily to acknowledge it, and that *God hath not done so to any other Nation.* It is a prime cause or meanes of this our happinesse.

You mention the forme of Government under which we live, a *Monarchie*, and the best of Monarchies, where Sovereignty is hereditarie, no *Inter-Regnum*, nor competition for a Crown ; Descent and Succession are all one. The Spirit of God by the mouth of the wisest of Kings long since proclaimed this happinesse, *Blessed art thou, O Land, where thy King is the son of Nobles.*

The frames of other States are subject some to inconstant  
Levitie,

Levitie , some to Faction , some to Emulation and Ambition, and all to manifold Distempers , in which the People go to wrack. The Monarchie is most naturall , and in it , Unity is the best cement of all government , principally in respect of the unity of the Head , which commands the rest. And therefore other States , when they have tryed a while , doe for the most part resolve into this , as into the best for Peace , for Strength , and for Continuance. But formes of other governments , though never so exact , move not of themselves , but are moved of their governours. And therefore our Monarchie , (as you have truly said) this glorious Assemblie , the lively image and representation of our Monarchie , is made happy and perfect by the Royall Presence that sits here in his highest Royal Throne , the Throne of the Law-giver , glorious in it selfe , glorious by those happy Lawes and Oracles which have issued from it , and most glorious by them that sit on it , his *Majestie* and his Royall Progenitours , incomparable Kings , that with so much honour have swayed the Sceptre of this Kingdome so many successions of Ages.

In the next place , after the Throne of *Majestie* , you look into the Chaire of Doctrine , the reverend *Prelates* , and upon the state of Religion , their proper charge. This is the blessing of all blessings , the priviledge and assurance that secures us of all the rest , that as our Religion is most sincere and orthodoxe , so our Clergie is eminent , both for purity of Doctrine and integrity of Life ; our Priests are clothed with righteousness , and their lips preserve knowledge , and therefore God's Saints may and doe sing with joyfulness.

I must joyn with you in attributing this transcendent blessing to us , as in the first place to God's goodness , so in the second to his *Majestie's* piety , who , following the steps of his ever-blessed Father , is carefull that all the Lamps of the Church may be furnished with Oyle , and especially those which are set on golden Candle-sticks with the purest and best oyle. The Schools also and nurceries of Learning , never so replenished , especially with Divinity , as in this last Age , as they all shew his *Majestie's* Piety , so are they infallible Arguments of his Constancy.

The triall , which you call the fierie triall , undergone by his *Majestie* in the place of danger , and again the power and policie of *Rome* and *Spaine* , hath approved his resolution inimitable : and his own remarkable example in his closet , and his chamber , his strict over-sight of and command to his Household servants , and his charge to his Bishops and Judges , his Edicts , his Proclamations and Commissions , and the like , for the execution of the Lawes , and his general care to preserve the fountain pure both from Schisme and Superstition , are faire fruits and effects of a pious and zealous resolution.

From



From the chaire of Doctrine you turn to the state of Honour, unto the *Nobles* and *Barons* of *England*. These are *Robur belli*, who for the service of the King and Kingdome, are to make good with their Swords what the *Church-men* must hallow and blesse by their Prayers. And therefore as the Prelates are the great Lights of the Church, so the Nobility are the Starres of the State; and you know that the starres have fought, and fought powerfully against the enemies of God.

From the state of Honour, you come to the state of Justice, and to the twelve Lyons under *Solomon's* Throne, the *Judges* and Sages of the Law, and as their peculiar charge intrusted to them by our Sovereigne, the Lawes of the Kingdome: Lawes undoubtedly fitted to the constitution of this people, for *Leges Anglia* and *Consuetudines Anglia* are *Synonyma*, and *Consuetudo est altera natura*; so as besides the justnesse and rightnesse of the Lawes, they are become naturall to our people, and that is one of the powerfulllest meanes which begetteth obedience: and such Lawes in the mouthes of learned and upright Judges, are like waters in a pure chanel, which the fairer it runs, the clearer they run, and produce that whereof *Solomon* speaks *Prov. 29.2.* *When the righteous are in authority, the People rejoyce.*

From the Law you passe to the *Knights*, *Citizens* and *Burgesses*, and the third Estate, who represent the *Commons* of *England*, in whom the Scripture is verified, *In the multitude of People is the Kings honour*: and therefore you may be sure that distance of place and order breeds no distance in affection; for wise Kings ever lay their honour next to their hearts. Kings are *Pastores populi*; and the Shepherds care is nothing lesse to the furthest, then to the next part of his Flock; and it is asmuch towards the least of his Lambs, as towards the greatest Cattel. And as in the Natural bodie, no member is so remote, but it is still within the care of the head: so in this great Politick bodie of the Kingdome, no ranck or order of People so low, is at such distance from the Throne, but it dayly feels the influence and benefit of the Kings care and protection. And, to say the truth, in a well-governed Kingdome, the superiour rancks of Nobles, of Judges, and of Magistrates, are not ordained for themselves, but as conduits for the Kings justice, protection and goodnesse to the lower rancks of his People. And as the People are, so its just cause they should be, constant to the Poles of Love and Loyalty.

And thus having perused both Houses by divided parts, joyn them together, and in that juncture, you believe truly and materially that the greatest denial of their joynt requests is, *The King will advise*. A note very remarkable: It shewes the indulgence of Kings, it shews also the wisdom and judgement of the Houses; the King not willing to deny his People, People not willing to presse

preſſe their King to a deniall; the one wiſe and modeſt in their requeſts, and the other moderate and ſweet in the answer. This is the ancient and right way of union in Parliament. The God of unity keep it in this, and all iſſuing Parliaments.

This union you rightly call the union of Hearts, and a greatneſſe beyond the Kingdomes which the King inherits: ſo then its a preſent fit for a wiſe people to offer to their gracious King. Wiſe and magnanimous Kings are a ſpeciall gift from God, having hearts capable of greatneſſe: union of hearts is greateſt, and greatneſſe was never unwelcome to Kings; and therefore preſent and offer it to your King, you cannot doubt of acceptance.

Having ſpoken of union, you fall preſently into a memoriall of the great and glorious actions of his *Majeſtie's* Predeceſſours, and into the height and contemplation of greater that remain. If I miſtake not your meaning, you would have it underſtood that the union of Prince and people make way to thoſe remarkable acts of former times, and that we that wiſh the like ſucceſſe in our time ſhould look back upon our Forefathers. Wiſdome requires it, Honour and the Time requires it, that we ſhould ſhew our ſelves the ſonnes of our Aunceſtours, at leaſt in holding that which they left us.

The pride of *Rome* abated (as you ſay) by *England*, now liſts up her horns againſt Religion: Gods vine planted and deeply rooted here, overſpread into our neighbour Countreys, hath of late loſt many of her goodly branches. The *Auſtrian* Eagle, that wanted feathers till of late, now ſoares and preys at will over all. *Spain*, ſo often foiled by us, hath (by diſguiſed treaties) diſpoiled of their patrimonie thoſe princely Branches of our royall Cedar, and poſts apace to his univerſall Monarchy, to the ruine of us, our Friends and Religion.

God hath his time, and I truſt a time to ſtop their courſe: I know not but we may expect it as well now as ever. There is a reſolution in our King, and there is, I truſt, (for I am ſure there was) a reſolution in our Parliament, for great actions. Our king as he hath a *Solomon*, ſo hath he many *Dauids* in the glorious catalogue of his royall Deſcent, and hath linked himſelf in the Houſe of *Henry* the Great, and he bears a glorious and auspicious name ſutable to his thoughts and deſires: and therefore ſince Honour and Religion call for it, and ſince you have encouraged him to fight *Iehovah's* battels, let all put to their hands, that our King and Nation may have the honour to ſet *Chriſtendome* in her right Balance.

And now to come to the petitions you have made for the Houſe, his *Majeſtie* moſt graciously and readily grants them all according to your true and ancient Rights and Priviledges of *Parliament*, which his *Majeſtie* truſts you will have care not to exceed or tranſgreſſe: and therefore you may go chearfully together, and ſpeedily ſettle about the publick affairs. And the almighty God proſper the works of your hands, I ſay, the almighty God proſper your handy-work.



*Mr. Goodwin's Speech, March 22. 1627.**Mr. Speaker,*

**I**T hath pleased his *Majestie* in his last Speech to intimate unto us the cause of our meeting, which is supply against the great and common dangers that threaten the ruine of this Kingdome: and the time of our sitting cannot be long, and therefore he wisheth to avoid tedious resolutions. In conformity whereunto I propound that, laying aside all other matters, we addresse our selves to that for which we were called hither: wherein as in the first place we have well begun, in our pious humiliation towards almighty God; so let us now proceed to serve and to supply the king, yet so as we satisfie our Countrey that sent us hither, and preserve our Rights and Priviledges, which have as surely been broken and infringed, as undoubtedly they belong  
to us.

*S<sup>r</sup> Francis Seymour's Speech, March 22. 1627.*

**T**His is the great *Council* of the Kingdome, and here, if not here alone, his *Majestie* may see as in a true glasse the state of the Kingdome. We are all called hither by his *Majestie's* writs to give him faithfull counsel, such as may stand with his honour, but that we must do without flatterie, and chosen by the Commons to deliver up their just grievances, and this we must do without fear. Let us not be like *Cambyses* Judges, who being demanded of him concerning something unlawfull, said, Though there were no written Law, the *Persian* Kings might do what they list. This was base flatterie, fitter for reproof then imitation: and as flatterie, so fear taketh away the judgement. For mine own part, I shall shun both these, and speak my conscience with as much duty to his *Majestie* as any man, not neglecting the Publick.

But how can we speak our affections, while we retain our fears, or speak of giving, till we know whether we have any thing to give or not? For if his *Majestie* shall be perswaded to take what he will, what need we to give?

That this hath been done, appeareth by the billeting of Souldiers, a thing no way advantageous to his service, and a burthen to the Common-wealth; the imprisonment of Gentlemen for the *Loane*, who if they had done the contrary for fear, their faults had been as great as theirs, who were Projectours in it. To countenance these proceedings, hath it not been preached in the pulpit, or rather prated, *All we have is the Kings?* But when they forsake their own calling,  
and

and turn ignorant States-men, we see how willing they will be to change a good conscience for a Bishoprick.

It is too apparent the people suffer more now then ever: will you know the true reason? we shall find those *Princes* have been in greatest wants and necessities, that have exacted most from their Subjects. The reason is plain. A *Prince* is strongest by faithful and wise Counsel: I would I could truly say such had been imployed abroad. I speak this to this end, to shew the defect proceeded not from this House.

I must confesse he is no good Subject that would not willingly and freely lay down his life, when the End may be the service of his *Majestie*, and the good of the Common-wealth. But he is no good Subject, but a slave, that will have his goods taken from him against his will, and his Liberty against the Laws of the Kingdome. In doing this we shall but tread the steps of our Fore-fathers, who still preferred the publick interest before their own rights, nay before their own lives. It will be a wrong to Us, to our Posterities, to our Consciences, if we shall forgo this. This we shall do well to present to his *Majestie*.

I offer this in the generall, thinking the particulars fitting for Committees, \* What I may now say, or shall then, I submit to better Judgements.



Sr. Thomas V Ventworth's *speech*, *March 22.*  
1627.

**M**AY this dayes resolution be as happy, as I conceive the Proposition ( which now moves me to rise ) to be seasonable and necessary ; for which we shall either look upon the King or his people. It did never more behove this great Physician the *Parliament* to affect a true consent amongst the parts , then now. This debate carries with it a double aspect, towards the Sovereigne, towards the Subject: though both be innocent, yet both are injured, both to be cured. In the representation of Injuries I shall crave your attention; in the Cure I shall beseech your equall cares and better judgements.

Surely, in the greatest humility I speak it, these illegall wayes are punishments and marks of indignation; the raising of Levies strengthened by Commission with unheard of instructions, the billeting of Souldiers by the Lieutenants and Deputy-lieutenants, have been as if they could have perswaded *Christian Princes*, nay worlds, the right of Empire had been to take away by strong hand, and they have endeavoured ( as farre as was possible for them ) to do it.

This hath not been done by the *King*, (under the pleasing shade of whose Crown I hope we shall ever gather the fruits of Justice) but by Projectours: They have pretended the Prerogative of the King beyond the just proportion, which makes the sweet harmony of the whole; They have rent from us the light of our eyes, enforced a company of guests worse then the Ordinaries of *France*, vitiated our wives and daughters before our faces, brought the Crown to greater want then ever by anticipating the renew: and can the Shepherd be thus smitten, and the Sheep not scattered ? They have introduced a Privie Councel, ravishing at once the spears of all ancient government, imprisoning us without bank or bond : They have taken from us — what shall I say ? ( indeed what have they left us ? ) all means of supplying the King, and ingratiating our selves with him, taken up the roots of all Propriety, which if it be not seasonably set into the ground by his *Majestie's* own hand, we shall have instead of Beauty, Baldnesse.

To the making of them whole I shall apply my self, and propound a remedy to all these diseases. By one and the same thing hath King and people been hurt, and by the same must they be cured; by vindicating — what ? new things ? no, our ancient, sober and vitall Liberties ; by reinforcing the ancient Laws made by our Auncestours ; by setting such a Character on them, as no licentious spirit shall dare to enter upon them. And shall we think this is a way to break a Parliament ? no, our desires are modest and just ; I speak truly both for the  
interest

interest of King and people. If we enjoy not these, it will be impossible to relieve him: therefore let us never fear that they shall not be accepted by his Goodnesse.

Therefore I shall descend to my Motion consisting of four parts; two of which have relation to our Persons, two to the propriety of our Goods. For our Persons, the freedome of them, first from imprisonment, secondly from imployment abroad, contrary to the ancient Customes. For our Goods, that no levies may be made but by Parliament: secondly, no billeting of souldiers.

It is most necessary that these be resolved, that the Subject may be secured in both. For the manner, in the second place, it will be fit to determine it by a *grand Committee*.

*The Speech and Argument of M<sup>r</sup>. Creswell of  
Lincolne's Inne, one of the Members of the  
Commons House of Parliament, concerning the  
Subjects grievance by the late Imprisonment of  
their persons without any declaration of the  
Cause.*

**I** Stand up to speak somewhat concerning the point of the Subjects grievance by imprisonment of their persons without any declaration of the cause, contrary unto, and in derogation of the fundamentall Laws and Liberties of this Kingdome.

I think I am one of the *puisnes* of our profession, which are of the Members of this House; but howsoever sure I am that in respect of my own inabilities I am the *puisne* of all the whole House: therefore according to the usuall course of Students in our profession, I (as the *puisne*) speak first in time, because I can speak least in matter.

In pursuance of which course I shall rather put the case then argue it: and therefore I shall humbly desire first of all, of this honourable House in generall, that the goodnesse of the cause may receive no prejudice by the weaknesse of my Argument; and next of all, of my Masters here of the same profession in particular, that they by their learned judgements will supply the great defects I shall discover by declaring of my unlearned opinion.

Before I speak of the Question, give me leave, as an entrance thereunto, to speak first of the Occasion.

You shall know *Justice* is the life and the heart-bloud of the Common-wealth; and if the Common-wealth bleed in the Master-vein, all the Balm in *Gilead* is but in vain to preserve this our body of Policy



from ruine and destruction. Justice is both *Columna & Corona reipublicae*, she is both the Column and the Pillar, the Crown and the glorie of the Common-wealth. This is made good in Scripture by the judgement of *Solomon*, the wisest King that ever reigned on earth. For first, she is the Pillar; for he saith that by Justice the Throne shall be established: Secondly, she is the Crown; for he saith that by Justice a Nation is exalted.

Our Lawes, which are the rules of this Justice, they are the *ne plus ultra* to both the King and the Subject: and as they are the *Hercules* Pillar, so are they the pillar to every *Hercules*, to every *Prince*, which he must not passe.

Give me leave to resemble her to *Nebuchadnezzars* tree: for she is so great, that she doth shade not onely the Pallace of the King, and the house of the Nobles, but doth also shelter the Cottage of the poorest beggar.

Wherefore if either now the blasts of indignation, or the unresistable violatour of lawes *Necessitie* hath so bruised any of the branches of this Tree, that either our persons, or goods or possessions have not the same shelter as before; yet let us not therefore neglect the Root of this great Tree, but rather with all our possible endeavour and unfeigned dutie, both apply fresh and fertile mould unto it, and also water it even with our own teares, that so these bruised Branches may be recovered, and the whole Tree again prosper & flourish. For this I have learned from an ancient Father of the Church, that though *preces Regum sunt armatae*, yet *arma subditorum* are but only *preces et lachrymae*.

I know well that *Cor Regis inscrutabile*; and that Kings, although they are but men before God, yet are they Gods before men. And therefore to my gracious and dread Sovereigne, (whose virtues are true qualities ingenerate both in his judgement and nature) let my arm be cut off, nay, let my soul not live that daie, that I shall dare to lift up my arm to touch that forbidden fruit, those flowers of his princely Crown and Diadem.

But yet in our *Eden*, in this garden of the Common-wealth, as there are the *flowers of the Sun*, which are so glorious that they are to be handled onely by royall *Majestie*; so are there also some *Daisies* and wholesome herbs, which every common hand that lives and labours in this garden may pick and gather up, and take comfort and repose in them. Amongst all which this *oculus dei*, this *bona libertas* is one, and the cheif one.

Thus much in all humbleness I presume to speak for the occasion. I will now descend to the Question: wherein I hold, (with all dutifull submission to better Iudgments) that these Acts of power in imprisoning and confining of his *Majesties Subjects* in such manner, without any declaration of the cause, are against the fundamentall Lawes and Liberties of this Kingdome.

And for these reasons thus briefly drawn, I conclude.

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1. The first from the great favour which the Law doth give unto, and the great care which it hath ever taken of the liberty and safety of this Kingdome.

I should not need to take the question in pieces, nor handle it in parts dividedly, but as one intire, because I hold no other difference between imprisonment and confinement then only this, that one hath a lesse and streighter, the other a greater and larger Prison. And this word Confinement not being to be found in any one case of our law, if therefore it is become the language of State, it is too difficult for me to define.

To proceed therefore in maintenance of my first reason; I find our Law doth so much favour the Subjects liberty of his Person, that the body of a man was not liable to be arrested or imprisoned for any other cause at the Common Law, but for force, and things done against the peace. For the Common Law (being the preserver of the land) so abhorreth force, that those that commit it she accompts her capitall enemies, & therefore did subject their bodies to imprisonment. But by the statute of *Marlebridge Cap. 24.* which was made *35. Hen. 3.* who was the eighth King from the Conquest, because Bailiffs would not render accounts to their Lords, it was enacted, that their bodies should be attached: And afterwards by the statute *23. Edw. 3. 17* who was the 11 King after the Conquest, because men made no Conscience to pay their debts, it was enacted that their bodies should likewise be attached. But before those statutes no mans body was subject to be taken or imprisoned otherwise then as afore said, Whereby it is evident how much the Common Law favoured the Liberty of the Subject and protected his body from imprisonment.

I will inforce the reason further by a Rule in Law, and some cases in Law upon that Rule.

The Rule is this, That *Corporalis injuria non recipit astimationem à futuro*: So as if the question be not for a wrong done to the person, the Law will not compell him to sustain it, and afterwards except a remedy, for the Law holds no damage a sufficient recompence for a wrong which is corporall.

The cases in Law to prove this rule shall be these.

If one menace me in my goods, or that he will burn the evidence of my land, which he hath in his custody, unlesse I make unto him a Bond, there I cannot avoyd the Bond by pleading of this menace. But if he restrains my person, or threatens me with battery, or with burning my house, which is a protection for my person, or with burning an instrument of manumission, which is an evidence of my enfranchisement; upon these menaces or dares I shall avoid the bond by plea.

So if a Trespassour drives my beast over another Mans ground, and I pursue to rescue it, there I am a Trespassour to him on whose ground I am. But if a man assault my person, and I for my safety fly over into another man's ground, there I am no Trespassour to him, for

*Quod*



*Quod quis in tuitione sui corporis fecerit, jure id fecisse existimatur.*

Nay, which is more, the Common Law did favour the Liberty not only of Freemen, but even of the persons of Bondmen and Villains, who have no right of propriety either in lands or goods as Freemen have: And therefore by the Law the Lord could not maim his Villain; nay, if the Lord commanded another to beat his Villain, and he did it, the Villain should have his action of Battery against him for it.

If the Lord made a Lease for yeares to his Villain, if he did plead with his Villain, if he tendred his Villain to be Champion for him in a Writt of Right, any of those acts, and many other, which I omit, were in Law infranchisements, and made these Villains Freemen. Nay in a suite brought against one, if he by Attorney will pleade that he is a Villain, the Law is so carefull of Freedome, that it disallows this plea by Attorney, but he must doe it *propria persona*, because it binds his Posterity and blood to the Villains also. And thus much in the generall for my first reason.

2. My next reason is drawn by an Argument *à majori ad minus*: I frame it thus; If the King have no absolute power over our Lands or Goods, then *à fortiori* not over our Persons, to imprison them without declaring the cause, for our Persons are much more worth then either Lands or Goods; which is proved by what I have said already, and Christ himself makes it clear where he saith, *An non est corpus supra vestimentum*, Is not the Body more worth then Raiment? where the *Canonists* say that *Vestimentum* comprehendeth all outward things which are not in the same degree with that which is corporall. And our Law maketh it also plain; for if a Villain purchase Frankland, this maketh it Villain-land according to the nature of his person; but it holds not *è converso*, Frankland shall not free the person. Now that the King hath no absolute power either over our Lands or Goods, I will onely at this time but put a case or two: for without proof of the Premisses my Conclusion would not follow.

First for Land; The King cannot by his Letters pattents make the son of an Alien heir to his father, nor to any other, for he cannot disinherit the right heir, saith the book, nor do no prejudice to the Lord of his Escheat. The King by his Prerogative shall pay no toll for things bought in Fairs and Markets: but a custome for paying toll to go over the soil and free-holds of another shall bind the King, for this toucheth the inheritance of the Subject; and therefore the King shall not have so much as a way over his lands without paying; and if not a way, then certainly not the land it self.

Next for Goods; If a man hath a Jewell in gage for ten pound, &c. and is attainted for Treason, the King shall not have this Jewell, if he payes not the ten pound. So if Cattell be distreined, and the owner of them afterwards be attainted, yet the King shall not have them untill he have satisfied that for which they were distreined. And if in  
these

these Cases, where the owners of the goods are such capitall offendours, the King cannot have them; much lesse shall he have them when the owner is innocent, and no offendour.

Nay, I may well say that almost every leaf and page of all the volumes of our Common Law prove this right of propriety, this distinction of *meum* and *tuum* aswell between King and Subject, as one Subject and another: and therefore my Conclusion follows, that if the Prerogative extend not neither to Lands nor to Goods, then *à fortiori* not to the Person, which is more worth then either lands or goods, as I said. And yet I agree that by the very law of Nature service of the Person of the Subject is due to his Sovereigne; but this must be in such things which are not against the law of Nature: but to have the body imprisoned without any cause declared, and so to become in bondage, I am sure is contrary unto and against the law of Nature, and therefore not to be enforced by the Sovereigne upon his Subjects.

3. My next reason is drawn *ab inutili & incommodo*. For the Statute *de frangentibus prisonam* made 1 E. 2. is, *quod nullus qui prisonam fregerit, subeat iudicium vite vel membrorum pro fractione prisona tantam, nisi causa pro qua captus imprisonetur tale Iudicium requirat*. Whence this Conclusion is clearly gathered, That if a man be committed to prison without declaring what cause, and then if either Malefactor do break the prison, or the Gaoler suffer him to escape, albeit the prisoner so escaping had committed *Crimen lese majestatis*, yet neither the Gaoler nor any other that procured his escape, by the Law suffer any corporall punishment for setting him at large; which, if admitted, might prove in consequence a matter of great danger to the Commonwealth.

4. My next reason is drawn *ab Regis honore*, from that great honour the Law doth attribute unto soveraign Majesty: and therefore the Rule of Law is, that *Solum Rex hoc non potest facere, quod non potest juste agere*. And therefore if a Subject hath the donation, and the King the presentation to a Church, whereunto the King presents without the Subjects nomination, here the *quare impedit* lies against the Incumbent, and the King is in Law no disturber.

And Hussy chief Justice in 1 H. 7. fol. 4. saith that Sir John Markham told King Edw. 4. he could not arrest a man either for treason or felony, as a Subject might, because that if the King did wrong, the party could not have his Action against him.

What is the reason that an Action of false imprisonment lies against the Sheriff, if he doth not return the Kings Writ, by which he hath taken the body of the Subject, but this, because the Writ doth *breviter enarrare causam captionis*, (which if it doth not, it shall abate, and is void in Law) and being returned, the party when he appears may know what to answer, and the Court upon what to judge? And if the Kings Writ under his great Seal cannot imprison the Subject, unless it con-



tains the cause, shall then the Kings warrant otherwise doe it without containing the cause, that his Judges upon return thereof may likewise judge of the same either to remain, or judge the partie imprisoned?

I should argue this point more closely upon the statute of *Magna Charta* 29. *quod nullus liber homo imprisonetur*; the statute of *West.* 1. cap. 15. for letting persons to bail; and the Judgements lately given in the *Kings Bench*: but the later of these statutes referring having been by that honourable Gent. (to whom the Professours of the Law both in this and all succeeding ages, are, and will be much bound) already expounded unto us, and that also fortified by those many contemporary Expositions and Judgements by him learnedly cited, and there being many learned Lawyers here, whose time I will not waste, who were present, and some of them perhaps of councill in the late Cause adjudged in the *Kings Bench*, where you (to whose person I now speak) do well know I was absent, being then of counsel in a cause in another Court, and my practice being in the Country, farre remote from the treasure of Antiquity, and Records conducing to the clearing of this point; Therefore the narrowness of my understanding commends unto me sober ignorance, rather then presumptuous knowledge, and also commands me no further to trouble your Patience,

But I will conclude with that which I find reported of Sir *John Davis*, who was the Kings Serjeant, and so, by the duty of his place, would no doubt maintain to his uttermost the Prerogatives of the King his royall Master; and yet it was by him thus said in those Reports of his upon the case of Taviſtry Customs, That the Kings of *England* alwayes have had a Monarchy Royall and not a Monarchy Seignorall: where under the first (saith he) the Subjects are Free-men, and have propriety in their goods, and free-hold, and inheritance in their Lands; but under the later they are as Villains and Slaves, and have propriety in nothing. And therefore (saith he) when a Royall Monarch makes a new Conquest, yet if he receives any of his Nations ancient Inhabitants into his protection, they and their heirs after them shall enjoy their Lands and Liberties according to the Law. And there he voucheth this President and Judgement following given before *William the Conquerour* himself, viz.

That one *Sherborn*, at the time of the Conquest being owner of a Castle and lands in *Norfolk*, the *Conquerour* gave the same to one *Warren* a *Norman*; and *Sherborn* dying, the Heir clayming the same by descent according to the Law, it was before the *Conquerour* himself adjudged for the Heir, and that the gift thereof by the *Conquerour* was void.

If then it were thus in the *Conquerour's* time, & by his own sentence and judgement, and hath so continued in all the successions of our Kings ever since, what doubt need we have, but that his most excellent *Majesty* upon our humble petition prostrated at his feet, (which, as was well said, is the best passage to his heart) will vouchsafe unto

us our ancient Liberties and Birthrights, with a through reformation of this and other just grievances. And so I humbly crave pardon of this honourable House, that I have made a short Lesson long.

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*Sir Benjamin Ruddier's Speech, March 22.  
1627.*

*Mr. Speaker,*

**O**F the mischiefs that have lately fallen upon us by the late distractions, here is every man sensible: and that may ensue the like (which God forbid) we may easily see, and too late repent. The eyes of *Christendome* are upon us; and as we speed here, so go the Fortunes of our selves, our Friends, and of our Religion. That the Dangers were not reall, but pretended, we all heartily wish, but feel the contrary. That divisions have weakned our party, and our attempts; united the two greatest Princes of *Christendome* against us, whom we have provoked. That the State is desperately diseased, and this *Parliament* the way that it may yet be recovered, if soveraigne and proper remedies be speedily applyed:

1. To trust the *King*, whose Kingly nature is to yield: it prevails.
2. To supply the King, and that without condition, which is fewel of Jealousie.
3. To present our grievances to his *Majesty*, personall and reall, humbly, moderately, and briefly.
4. To do all this speedily and in order, whereby the King may be strengthened, the Kingdome recovered, our Allies relieved, and the Laws and Liberties of the Subject preserved in a legall propriety; for he that is not master of his goods, dwells not at home.



*Sir Robert Philips his Speech, March 22. 1627.**Mr. Speaker,*

**I** Reade of a custome amongst the old *Romans*, that once every year they had a solemn Feast for their *Slaves*, at which they had liberty without exception to speak what they would (thereby to ease their afflicted minds) which being finished, they severally returned to their former Servitude.

This may, with some resemblance and distinction, well set forth our present state, where now, after the revolution of some time, and grievous sufferance of many violent oppressions, we have (as those *Slaves* had) a day of liberty of speech, but shall not (I trust) be hereafter slaves, for we are free: yet what new illegall proceedings our states and persons have suffered under, my heart yearns to think, my tongue falters to utter. They have been well represented by divers worthy Gentlemen before me; yet one, and the maine (as I conceive) hath not been touched, which is our *Religion*: Religion, *Mr. Speaker*, made vendible by Commission, and men for pecuniary annuall rates dispenced withall, whereby Papists may without feare of Law practice Idolatry.

For the Oppressions under which we grone, I draw them into two heads: Acts of Power against Law, and Judgements of Law against our Liberty.

Of the first sort are, strange instructions, violent exactions of money thereupon, imprisonment of the persons of such who (to deliver over to posteritie the liberty they have received from their Fore-fathers, and lawfully were in possession of) refused so to lend; and this aggravated by reason of the remediless continuance and length thereof: and chiefly the strange, vast, and unlimited power of our Lieutenants and their Deputies, in billeting of Souldiers, in making rates, in granting warrants for taxes as their discretions shall guide them; and all against the Law.

These last are the most insupportable burthens that at this present afflict our poor Country, and the most cruel oppression that ever yet the Kingdome of *England* endured. These upstart Lieutenants (of whom perhaps in some cases and times there may be good use, being regulated by Law) are the worst of grievances, and the most forward and zealous executioners of those violent and unlawfull courses which have been commended unto them. Of whose proceedings, and for the qualifying of whose unruly power, it is more then time to consult and determine.

Judgements of Law against our Liberty have been three, each latter stepping forwarder then the former upon the right of the Subject, aiming in the end to tread and trample under foot our Law, and that in the form of Law.

The

The first was the Judgement of the *Post-nati*, whereby a Nation, which I heartily love for their singular zeal in our Religion, and their spirit to preserve our Liberties far beyond many of us, is made capable in any the like favours, priviledges and immunities as our selves enjoy, and this specially argued in the *Exchequer Chamber* by all the Judges of *England*. The second was the Judgement upon the impositions in the *Exchequer Court* by the Barons, which hath been the source and fountain of many bitter waters of affliction unto our Merchants. The third was that fatall late Judgement against the Liberty of the Subject imprisoned by the King, argued and pronounced but by one alone.

I can live although another without title be put to live with me; nay, I can live although I pay excises and impositions more then I doe: but to have my Liberty, which is the soul of my life, taken from me by power, and to have my body pent up in a gaole without remedy by Law, and to be so adjudged, Oh improvident Ancestors! Oh unwise Fore-fathers! to be so curious in providing for the quiet possession of our Laws, and the Liberties of Parliament, and to neglect our Persons and Bodies, and to let them ly in prison, and that *durante beneplacito*, remediless. If this be Law, what do we talk of Liberties? why do we trouble our selves with the dispute of Law, franchises, propriety of goods, and the like? What may any man call his, if not Liberty?

I am weary in treading these waies, and conclude to have a select Committee deputed to frame a Petition to his *Majestie* for redress of these things; which being read, examined and approved by the House, may be delivered to the King; of whose gracious answer we have no cause to doubt, our desires being so reasonable, our intentions so loyall, and the manner so humble. Neither need we feare this to be the *Critical Parliament* (as was insinuated) or this a way to distraction; but assure our selves of a happie issue. Then shall the King (as he calls us his great Councell) find us his true Councell, and owne us his good Councell. Which God grant, &c.



*Sir Thomas Edmonds, March 22. 1627.*

**T**He King congratulating this present *Parliament*, he prays for a blessed supply, he assures us of his gracious inclination towards us, and of the consequence of this meeting, doth intimate how much the safety of our selves and Confederates abroad depends upon the good successe thereof: and he wisheth a generall oblivion of things that are past, least they cause distractions anew, without a primary and free Supply to his *Majestie*.

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*Sir John Elliot, March 22. 1627.*

**S**Ir *John Elliot* did passionately and rhetorically set forth our late Grievances he misliked much and vehemently the violating of our Laws, urged many good arguments for our propugning them, and concluded (with Sir *Francis Seymour*) for a Committee.

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*Sir Humfrey Maye, March 22. 1627.*

**L**Et us take heed of distracting the King, who is young and vigorous, full of spirit and courage, and may be wone to our devices by our complying, and alleadging all these illegall proceedings were actions of Necessity, and the like, with other things by way of excuse.

*The Petition for the Fast, March 26. 1628.**Most Gracious Sovereigne,*

**W**E your *Majestie's* most humble and loyall Subjects, the Lords Spirituall and Temporall and Commons in this present *Parliament* assembled, upon a tender and passionate sense of the extream Calamities of the Reformed *Churches* abroad, and with much sorrow apprehending the heavy displeasure of almighty God declared against our selves, in the manifold Evils already fallen upon us, and in those which are further threatned ( as by your sacred *Majesty* was intimated to us ) even to the utter destruction and subversion of this Church and State ( all which our sins have justly deserved ) and being now by your *Majestie's* gracious favour assembled in Parliament as the great Councel of this your Kingdome, to consult on such means as we conceive fittest to redresse the present, and prevent the future Evils; ( wherein, through Gods blessing, we intend to imploy our utmost endeavours, with as good hearts to your *Majestie* and the publick service as ever people did ) do in the first place humbly beseech your *Majesty*, that by your speciall command, one or more daies may be forthwith solemnly set apart, wherein both our selves and this your Kingdome may by Fasting and Prayer seek a Reconciliation at the hands of almighty God, and with humble and penitent hearts beseech him to remove those miseries that lie upon us and our neighbour Churches, to avert those which are threatned, to continue the favours which we yet enjoy, and particularly to bestow his abundant blessing upon your *Majesty* and this present *Parliament*; so that all our counsels and consultations being blessed with his divine assistance, may produce much honour, safety and happinesse to your *Majesty*, your People, and Allyes.

*The*



## *The Kings Propositions, March 28. 1628.*

1. **T**O furnish, man and victuall 30. ships, to guard the Narrow seas and along the Coasts.
2. To set out 10. other ships for the preservation of the *Elve* and the *Baltick* sea.
3. To set out 10. other ships for the relief of the Town of *Rochel*.
4. To leavy, arme, cloth, victuall, pay and transport an army of 1000. horse and 10000. foot for forrain service.
5. To pay and supply 6000. men for the assistance of the King of *Denmark*.
6. To supply the stores of the Office of the Ordinance.
7. To supply the stores of the Navy.
8. To build 20. ships yearly for the increase of the Navy.
9. To repair the Forts within the Land.
10. To pay the Arriers of the Office of the Ordinance.
11. To pay the Arriers of the Victuallers Office.
12. To pay the Arriers of the Treasurer of the Navy.
13. To pay the Arriers due for the freight of divers Merchants ships imployed in his *Majestie's* service.
14. To provide a Magazine of Victualls for Land and Sea-service.

## *Three grand Questions.*

1. **N**O Free-man ought to be committed, or detained in prison, or otherwise restrained, by the command of the King, of the Privy Council, or any else, unlesse some cause of the commitment, detainment, or restraint be expressed, for which by law he ought to be committed, detained, or restrained.
2. A Writ of *habeas corpus* may not be denyed, but ought to be granted to every man that is committed, or detained in prison, or otherwise restrained, though it be by the command of the King, Privy Council, or any other, he praying the same.
3. If a Free-man be committed, or detained in prison, or otherwise restrained by the command of the King, Privy Council, or any other, unlesse the cause of the commitment, detainment, or restraint be expressed, for which by Law he ought to be committed, detained or restrained, and the same be returned upon *habeas corpus* granted for the said party, that then he ought to be delivered, or bailed.

*Sir*

*Sir John Coke his Speech at a Conference between  
the Lords and Commons about the Petition to  
the King against Recusants.*

My Lords,

**W**E are sent to attend this Conference from the Knights, Citizens and Burgeses of the House of Commons. And first we acknowledge all due honour both unto the reverend Fathers of the Church, and to you, noble Lords, in that ye have shined before us as worthy lights in the encouragement and maintenance of true Religion. It is the true support of all your dignities and honours. And this forwardnesse of yours is the more remarkable, when that viperous generation (as your Lordships justly stile them) doe at ease with tooth and nail assay to rend the bowels of their Mother. For give me leave to tell you what I know, that they now both vaunt at home, and write to their friends abroad, they hope all will be well, and doubt not to prevail, and to win ground upon us.

And a little to awake the zeal and care of our learned and grave *Fathers*, it is fit that they take notice of that *Hierarchie* which is already established in competition with their Lordships: for they have a Bishop consecrated by the *Pope*; this Bishop hath his subalternate Officers of all kinds, as Vicars-generall, Arch-deacons, rurall Deans, Apparatours, and such like. Neither are those nominall or titular Officers alone, but they all execute their Jurisdctions, and make their ordinary Visitations through the Kingdome, keep Courts, and determine Ecclesiasticall causes, and (which is an argument of more consequence) they keep ordinary intelligence by their Agents in *Rome*, and hold correspondence with the *Nuntioes* and *Cardinalls* both at *Bruxells* and in *France*.

Neither are the Seculars alone grown to this height, but the *Regulars* are more active and dangerous, and have taken deep root; they have already planted their Societies and Colledges of both Sexes, they have settled Revenues, Houses, Libraries, Vestments, and all other necessary provisions to travell or stay at home; nay, even at this time they intend to hold a concurrent Assembly with this Parliament.

But now since his sacred *Majesty* hath extended his royall arm, and since the Lords of his Councell have by their authority caused this nest of Wasps to be digged out of the earth, and their Convocations to be scattered, and since your Lordships joyn in courage and resolution, at least to reduce this People to their lawfull restraint, that they may doe no more hurt, we conceive great hope and comfort, that the almighty God will from henceforth prosper our endeavours both at home and abroad.

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But



But now, my Lords, to come to the chief errand of this our meeting, which is to make known to you the approbation of our House of that Petition to his *Majesty*, wherein you were pleased to request our concurrence.

The House hath taken it into serious consideration, and from the beginning to the end approve of every word, and much commend your happy pen: onely we are required to present unto you a few additions, whereby we conceive the Petition may be made more agreeable to the Statutes, which are desired to be put in execution, and to a former Petition granted by his *Majesty*, recorded in both Houses, confirmed under the Broad Seal of *England*, and published in all the Courts of our ordinary Justice. But these things we propound not as our Resolutions, or as matters to raise debate or dispute, but commend them only as our Advise and desire, being ready notwithstanding to joyn with your Lordships in the Petition as now it is, if your Lordships shall not find this reason to be of weight.

These additions were but few, and were approved of by the Lords, and inserted in the Petition the 29. *March* 1628.

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*The Petition of both Houses to his Majesty concerning Recusants, March 31. 1628.*

**VV**E your *Majesties* most loyall and obedient Subjects, the Lords Spirituall and Temporall and Commons in Parliament assembled, having to our singular comfort obtained your *Majesties* pious and gracious assent for a publick Fast, to appease the wrath of almighty God kindled against us, and to prevent those grievous Judgements which doe apparently presse upon us; doe in all humility present unto your Sacred *Majesty* all possible thanks for the same.

And because the publick and visible Sins of the Kingdome are the undoubted Causes of those visible Evils that are fallen upon us, amongst which sins (as is apparent by the Word of God) Idolatry and Superstition are the most hainous and crying sins; to the end that we may constantly hope for the blessing of God to descend upon this our publick Humiliation, by abandoning those sins which doe make a wall of separation betwixt God and us,

I. We most humbly and ardently beg at the hands of your Sacred *Majesty*, that your *Majesty* will be pleased to give continuall life and motion to all those Laws that stand in force against *Iesuites*, *Seminary Priests*, and all that have taken Orders by authority of the Sea of *Rome*, by exacting a more due and serious execution of the same: amongst which number, those that have highly abused your *Majesties* Clemency, by  
returning

returning into the Kingdome after their Banishment, contrary to your Highnesse expresse Proclamation, we humbly desire may be left to the severity of your Laws, without admitting any mediation or intercession for them; and that such of your *Majesties* unsound and ill-affected Subjects as doe receive, harbour or conceal any of that viperous generation, may without delaies suffer such penalties and punishments as the Laws most justly impose upon them.

2. That your *Majesty* would be pleased to command a secure and streight watch to be kept in and over your *Majesties* Ports and Havens, and to commit the care and charge of searching of ships for this discovery, and apprehension as well of *Jesuits* and *Seminary-Priests* brought in, as of children and young Students sent over beyond the Seas, to suck in the poison of Rebellion and Superstition, unto men of approved Fidelity and Religion; and such as shall be convicted to have connived or combined in the bringing in of the one, or conveying out of the other, that the Lawes may passe upon them with speedy execution.

3. That considering those dreadfull dangers ( never to be forgotten ) which did involve your *Majesties* Sacred Person, and the whole representative Body of your *Majesties* Kingdome, plotted and framed by the free and common accessse of Popish *Recusants* to the city of *London*, and to your *Majesties* Court, your *Majesty* would be graciously pleased to give speedy command for the present putting in practice those Laws that prohibite all Popish *Recusants* to come to the Court, or within ten miles of the City of *London*, as also those Law that confine them to the distance of five miles from their dwelling houses; and that such by-past licenses, not warranted by law, as have been granted unto them for their repair to the city of *London*, may be discharged and annulled.

4. That whereas it is more then probably conceived, that infinite summes of money have within these two or three yeares last past been exacted out of the *Recusants* within the Kingdome, by colour of Composition, and small proportion of the same returned into your *Majesties* Coffers, not onely to the suddain enriching of private persons, but also to the imboldning of the *Romish Recusants* to entertain Massing Priests into their private houses, and to exercise all the mimick Rites of their grosse Superstition without fear of controll, amounting ( as by their daily practice and ostentation we may conceive ) to the nature of a concealed Toleration; your *Majesty* would be graciously pleased to receive this particular more nearly into your Princely wisdom and consideration, to dissolve this Mystery of Iniquity, patch't up of colourable Licenses, Contracts or Preconveyances, being but masks on the one part of fraud to deceive your *Majesty*, and stales on the other side for private men to accomplish their corrupt ends.

5. That as the persons of Ambassadors from forraigne Princes & their houses be free for exercise of their own Religion; so their houses



may not be made free Chappells and Sanctuaries for your *Majesties* Subjects Popishly affected to heare Masse, and to participate in all other Rites and Ceremonies of that Superstition, to the great offence of almighty God, and scandall of your *Majesties* people loyally and religiously affected; That either the concourte of Recusants to such places may be restrained, or at least such a vigilant watch set upon them at their returne from those places, as they may be apprehended, and severely proceeded withall, *ut qui palam in luce peccant, in luce puniantur.*

6. That no place of authority or command within any the Counties of this your *Majesties* Kingdome, or in any ships of your *Majesties*, or which shall be imployed in your service, be committed to Popish *Recusants*, or to *Non-communicants* by the space of a year past, or to any such persons as, according to direction of former Acts of State, are justly to be suspected; as the place and authority of Lords Lieutenants, Deputy Lieutenants, Justices of Peace, of Captains, or other Officers or Ministers mentioned in the Statute made in the third year of the reign of your Father of blessed memory: and that such as by connivance have crept into such places, may by your *Majesties* royall Command be discharged of the same.

7. That all your *Majesties* Justices, Judges, and Ministers of Justice, unto whose care and trust Execution, which is the life of your *Majesties* Laws, is committed, may by your *Majesties* Proclamation not only be commanded to put in speedy execution those Laws that stand in force against *Jesuits*, *Priests*, *Seminaries*, and Popish *Recusants*; but that your *Majesty* would be further pleased to command the said Judges and Justices of Assize, to give a true and strict accompt of their proceedings at their return out of their Circuits, to the Lord Keeper, and by the Lord Keeper to be presented to your *Majesty*.

8 And for a fair and clear eradication of all Popery for the future, and for the breeding and nursing up of an holy generation, and a peculiar people sanctified to the true worship of almighty God, That untill a provisionall Law may be made, for the trayning and educating of the Children of Popish *Recusants* in the grounds and principles of our holy Religion, (which we conceive will be of more power and force to unite your people unto your *Majesty* in fastnesse of Love, Religion, and loyall Obedience, then all pecuniary mulcts and penalties that can possibly be devised) your *Majesty* will be pleased to take it into your Princely care and consideration.

These our humble Petitions, proceeding from hearts and affections loyally and religiously devoted to God, and your *Majesties* service, and to the safety of your *Majesties* Sacred Person, we most zealously present to your Princely Wisdome, craving your *Majesties* chearful and gracious approbation.

*The*

The King's Answer to the Petition against Recusants, March 31. 1628.

My Lords and Gentlemen,

**I** Do very well approve the method of your proceeding, à Jove principium, hoping that the rest of your Consultations will succeed the happier. And I like the preamble of my Lord Keeper, otherwise I should a little have suspected that you thought me not so carefull of Religion as I have been and ever shall be, wherein I am as forward as you can desire.

As for the Petition, I answer, first in generall, that I like it well, and will use those, as well as all other means, for the maintenance and propagation of that Religion wherein I have lived, and doe resolve to die. But for the particulars, you shall receive a more full answer hereafter.

And now I will only add this, that as we pray to God to help us, so we must help our selves; for we can have no assurance of his assistance, if we do ly in bed and only pray, without using other means. And therefore I must remember you that if we do not make provision speedily, we shall not be able to put one Ship to sea this year.

Verbum sapienti satis est.



*The Answer to the same Petition by the Lord  
Keeper Coventrey.*

**T**O the first point his *Majesty* answereth, That he will according to your desire give both life and motion to the Laws that stand in force against *Iesuits, Seminary Priests*, and all that have taken Orders by authority of the Sea of *Rome*: and to that end his *Majesty* will give strict order to all his Ministers for the discovering and apprehending of them, and so leave them being apprehended to the triall of the Law; and in case after tryall there shall be cause to respite the execution of any of them, yet they shall be committed, according to the example of best times, to the Castle of *Westbitch*, and there be safely kept from exercising their functions, or spreading their Superstitious and dangerous Doctrine: and for the receivers and abettors they shall be left to the Law.

To the second, His *Majesty* granteth all that is desired in this Article, and to this end will give order to the Lord Treasurer, Lord high Admirall, and Lord Warden of the Cinque Ports, that in their severall places they be carefull to see this Article fully executed, giving strict charge to all such as have place or authority under them, to use all diligence herein: and his *Majesty* requireth them, and all other his Officers and Ministers, to have a vigilant eye upon such as dwell in dangerous places of advantage or opportunity for receiving or transporting any such as are here mentioned: and his *Majesty* will take it for good service, if any will give knowledge of such as have connived or combined, or shall connive or combine, as is mentioned in this Article, that Justice may be strictly done upon them.

To the third, His *Majesty* will take order to restrain the recourse of *Recusants* to the Court; and also for the other points of this Article, his *Majesty* is well pleased that the Laws be duly executed, and that all unlawfull Licenses be annulled and discharged.

To the fourth, His *Majesty* is most willing to punish for the time past, and prevent for the future any the deceits and abuses mentioned in this Article, and will account it a good service in any that will inform himself, his Privy Councell, Officers of his Revenue, Judges, or Councell learned, of any thing that may reveal this Mystery of Iniquity: and his *Majesty* doth strictly charge and command every of them to whom such information is made, that they suffer not the same to die, but do their utmost endeavour to effect a clear discovery, and bring the Offenders to punishment: and to the intent that no concealed toleration may be effected, his *Majesty* leaveth the Lawes to their course.

To the fifth, His *Majesty* is pleased to prohibite and restrain the coming and resort to the house of Ambassadors, and will command a vigilant watch to be set for their taking and punishing as is desired.

To the sixth, He is perswaded that this Article is already observed  
with

with good care; neverthelesse for the avoyding as much as may be errors and escapes in that kind, his *Majesty* will give order to the Lord Keeper, that the next Terme he call unto him all the Judges, and take information from them of the state of their severall Circuits; if any such as are mentioned in this Article be in the Commission for Peace, that reformation may be made thereof: and will likewise give order to the Lord Admirall, and to such persons to whom it shall appertain, to make diligent enquiry, and certifie to his *Majesty* if any such be in place of authority and command in his ships or service.

To the seventh, His *Majesty* doth fully grant it.

To the eighth, His *Majesty* doth well approve it as a matter of necessary consideration; and the Parliament now sitting, he recommendeth to both Houses the preparation of a fitting Law to that effect: and his *Majesty* doth further declare, that the mildnesse that hath been used towards them of the Popish Religion, hath been upon hope that forraign Princes thereby might be induced to use moderation towards their Subjects of the Reformed Religion, but not finding that good effect which was expected, his *Majesty* resolveth (unlesse he shall very speedily see better fruit) to adde a further degree of severity to that which is in this Petition desired.

*Sir Edward Coke's Speech, March 25. upon a Question of Law in point of the Judgement given in the Kings Bench Mich. 3. Caroli, Viz. That a Prisoner detained by Committment per special. mandat. Regis; without expressing a Cause, is notailable; wherein he held negatively, and spake as followeth.*

**I**T is true that the Kings *Prerogative* is a part of the Law of this Kingdome, and a supream part, for the *Prerogative* is highly tendred and respected of the Law, yet it hath bounds set unto it by the Laws of *England*. But some worthy Members of this House have spoken of forraign States, which I conceive to be a forraign Speech, and not able to weaken the Side I shall maintain.

That Master *Attorney* may have something to answer unto, I will speak without taking another day to the body of the Cause, yet keeping something in store for another time. I have not my *Vade mecum* here, yet I will endeavour to recite my Ancestours truly. I shall begin with old Authority, for *Errorem ad sua principia referre, est refellere*.

The ground of this Errour was the Statute of *Westm. 1 cap. 15.* which saith, that those are not repleviable who are committed for the death



death of a man, or by the commandment of the King or his Justices for the Forrest ( for so it was cited, ) and *Stamford* 71. expounding hereof, the commandment of the King to be the commandment of the Kings mouth, or of his Councill: But it is clear that by *praeceptum* is understood the commandment of the Justices of the *Kings Bench* and *Common Pleas*; and this is *contemporanea expositio, quae est fortissima in lege.*

To this purpose *vide Westm. 1. cap. 9.* the book of 2. R. 2. item cap. 20. *de malefactoribus in parc.* the book of 8 Hen. 4. 5. item 25. 26. 29. cap. *eiusdem statuti.* whereby it may appear that the commandment here spoken of to be the commandment of the King, is his commandment by his Judges, *Praeceptum Domini Regis in Curia, non in Camera.* So it is likewise taken 1. R. 2. cap. 12. in a Statute made in the next Kings reign, and expressly in *Dyer fol. 162. §. 50. & fol. 192. §. 24.* Shall I further prove it by matter of record? *Fac hoc & vires.* it is 18. E. 3. Rot. 33. *coram Rege, Iohn Bilston's Case*; who being committed and detained in prison by commandment of the King, was discharged by *Habeas corpus, eo quod Breve Domini Regis non fuit sufficiens causa.*

All the Acts of Parliament in title of accusation are direct to the point, and also the 16. Hen. 6. *Brooke and Littleton, 2. 1. monstrans de fait 182 per Cur.* The King cannot command a man to be arrested in his presence: the King can arrest no man, because there is no remedy against him. 1. Hen. 7. 4. likewise *prædict. stat. cap. 18.* the Kings pleasure is not binding without the assent of the Realm:

I never read any opinion against what I have said, but that of *Stamford*, mistaken ( as you see ) in the ground: yet I say not that a man may not be committed without precise shewing the cause in particular; for it is sufficient if the cause in generall be shewed, as for Treason, &c. 1. E. 2. stat. *de frangend. prison. nullus habeat iudicium,* &c. there the cause of imprisonment must be known, else the Statute will be of little force; the words thereof doe plainly demonstrate the intent of the Statute to be accordingly.

I will conclude with the highest authority, that is, 25. chap. of the Acts of the Apostles, the last verse, where Saint Paul saith, *It is against reason to send a man to prison without shewing a Cause.*

Thus, Master Attorney, according to the rules of Physick, I have given you a Preparative, which doth precede a Purge. I have much more in store.

*The substance of the King's Speech, upon the relating  
of the proceedings of the Parliament to him by the  
Counsellors of the Commons House of Parliament,  
4. April. 1628.*

**H**IS *Majestie* upon the Report made expressed great contentment that it gave him, not valuing the money given comparable to the hearts shewed in the way of the gift: for although his great Occasions of State did require more money then at this time was given; yet now he made account he could not lack, since he had their loves, and that this day he thought he had gained more reputation in Christendome, then if he had won many battails: saying further (according to his Speech the first day of the Parliament, that they might easily make him in love with Parliaments) now he professed he was so, and that we should find the fruits of it by his calling us often together. And to secure further feares, and create future confidence, he assured thus that we shall enjoy as great immunity and freedome in his time, as ever we possessed or had under the reigne of any the best Kings of this Realm.

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*The Duke of Buckingham's Speech to his Majestie  
on Friday, being the 4. of April. 1628.*

*Sir,*

**M**E thinks I now behold you a great King; for love is greater then Majestie. Opinion that your people loved you not, had almost lost you in the opinion of the World: but this day makes you appear, as you are, a glorious King, loved at home, and now to be feared abroad.

This falling out so happily, I beseech you give me leave to be an humble Suitour unto your *Majestie*, First for my self, that I, who have had the honour to be your Favourite, may now give up my title unto them, they to be your Favourite, and I to be your Servant. My second suit is, that they having done all so well, you will account of them all as one, a Body of many Members, but all of one heart. Opinion might have made them differ, but Affection did move them all to joyn with like love in this great gift. For proportion although it be lesse then your occasions may ask, yet it is more then ever

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Sub.



Subjects did give in so short a time: nor am I perswaded it will rest there, for this is but an earnest of their affections, to let you see, and the world know, what Subjects you have, that when your Honour and the good of the State is engaged, and aid asked in the ordinarie way of Parliament, you cannot want. This is not a gift of 5 Subsidies alone, but the opening of a Myne of Subsidies which lieth in their hearts.

This good beginning hath wrought already these good effects; they have taken your heart, drawn from you a declaration that you will love Parliaments, and again this will meet ( I make no question ) with such respect, that their demands will be just, dutifull and moderate; for they that know thus to give, know what is fit to ask. Then cannot your *Majestie* do lesse then out-go their demands, or else you do lesse then your self, or them: for your Message begat trust, their trust and your promise must beget performance. This being done, then shall I with a glad heart behold this work as well ended as now begun, & then shall I hope that Parliaments shall be made hereafter so frequent by the effects and good use of them, as they shall have this further benefit, to deterre from approaching your eares those Projectours and Inducers of Innovation, as Disturbers both of *Church* and *Common-wealth*.

Now, *Sir*, to open my heart and to ease my grief, please you to pardon me a word more. I must confesse I have long lived in pain, sleep hath given me no rest, favours and fortunes no content, much have been my secret sorrows to be thought the *Man of Separation*, and that divided the King from his People, and them from him. But I hope it shall appeare there were some mistaken mindes, that would have made me the *Evil Spirit* that walked between a good Master and a loyall people for ill offices; whereas by your *Majesties* favour I shall ever endeavour to approve my self a good spirit, breathing nothing but the best of service to them all. Therefore this day I account more blessed unto me then my birth, to see my self able to serve them, to see you brought in love with Parliaments, to see a Parliament expresse such love to you, and God so love me and mine as I joy to see this day.

*Sir*

*Sir John Elliot in answer to Mr Secretary Cokes  
Message of Thanks from the King and the Duke  
of Buckingham delivered in the Commons House of  
Parliament 5. April, 1628.*

*Mr. Speaker,*

**I** Presume we have all received great satisfaction from his *Majestie* as at other times, so now in his gracious answer and resolution for the businesse of this House, his answer to our Petition for Religion so particularly made, his resolution in that other consideration concerning the point already settled here in Declaration of our Liberties; and for the Parliament in generall, that he hath taken so good a liking to our manner of proceeding, as it hath gained his promise therein to meet often: where I am made confident as of his grace to us, so of our Loyalties, that to thus good a Beginning we should adde so happy a Conclusion, as shall increase that liking and good opinion in his *Majestie*, and from henceforth make him more and more in love with *Parliaments*.

As thus in generall, so in my particular I receive excellent satisfaction herein, so as I have not words enough sufficiently to utter it. And yet I confesse that extremity of joy is not without trouble, which must likewise be declared, to disburden this affection which cannot otherwise so lively and so faithfully expresse me in the service of the House as I have resolved.

I know not what fatality or infortunity crept in, but I observe in the close of that Relation no mention of any other in addition to his *Majesty*, and that which formerly hath been a matter of complaint, here I find it still, the mixture with his *Majestie* not only in his businesse but in name. Is it that any man conceives the mention of others (of what quality soever) can adde encouragement or affection to us in our Duties and Loialties towards his *Majestie*, or give them greater latitude or extent then naturally they have? Or is it supposed that the power or interest of any man can adde more readinesse to his *Majesty* in his gracious inclination to us, then his own goodnesse gives him? I cannot believe it. And as the Sweetnesse and Pietie of his *Majesty*, which we have in admiration, makes me confident in this; so the expression of our Dutie so perspicuous and cleer as already hath been given, is my assurance for the other.

But Sir, I am sorry there is this occasion that these things should be argued, or this mixture, which was so meerlie condemned, should appear again. I beseech you, Sir, let it not be hereafter, let no man take this boldnesse within these walls, to introduce it: though (I confesse)



for my particular I shall readily commend, nay, thank that man whose endeavours are applyed to such offices as may be advantageable for the publick, yet in this manner, so contrarie to the customes of our Fathers, and the honour of our Times, as I cannot without Scandall apprehend it, I cannot without some Character or exception passe it. And therefore I desire that such interposition may be left, and that all other \*\*\*\* respects and goodneses of his *Majesty*, in the confidence of our own loyaltie and affections.

Now let us proceed to those services that concern him, which I doubt not in the end will render us so reall unto him, that we shall not need more help to endear us to his favour.

*A Message by Secretary Coke from the King to the Lower House, April 7. 1628.*

**H**Is *Majesty* hath again commanded me to put you in mind how the eyes and interest of the *Christian World* are cast upon the good or ill successe of this *Assemblee*. He also graciously taketh notice of that which is in agitation amongst us touching the freedom of our Persons and propriety of our Goods. And that this particular care, which he in no way misliketh, may not retract our resolution for the generall good, he willeth us cheerfully to proceed in both, and to expresse our readinesse to supply his great Occasions, upon assurance that we shall enjoy all our Rights and Liberties with as much freedom and security in his time, as in any age heretofore under the best of our Kings. And whether you shall think fit to secure our selves herein by way of Bill, or otherwise, so as it be provided for with due respect to his Honour and the publick good, whereof he doubteth not but you will be carefull; he promiseth and assureth you that he will give way unto it: and the more confidence you shall shew to his Grace and Goodnesse, the more you shall prevaile to obtain your desires.

Sir Benjamin

*Sir Benjamin Ruddier's Speech upon the receipt of his  
Majestie's Answer to the Petition against Recu-  
sants.*

*Mr Speaker,*

**T**He best thanks we can return his *Majesty* for his gracious and religious answer he hath given to our Petition, is to move towards that which will both please him and secure our selves.

The dangers and necessities of the present state, Mr Speaker, are so obvious to every mans eye and understanding, and therefore so well known, as to make a large and particular rehearfall of them would rather astonish our judgements, then refresh our memorie. Wherefore in short and in grosse, I will but only reflect upon the desperate condition of the *Kings Uncle*, the King of *Denmarke*, engaged from hence, even to the hazzard of his own Kingdome, in the quarrell of that royall and victorious Lady his *Majesties Sister*, for the recovery of her and her childrens patrimony, the preservation and reestablishment of the Religion in those Countreys: so that the King is bound in nature, in policie, and in religion to relieve and assist both the persons and the cause to the utmost of his power.

Believe it, Mr Speaker, the hindege of the many busineses mov'd in *Germany* doth not a little presse us to look about us at this time; for if that great bodie were once united under one head, it would crush all the rest with the weight of it.

Next let us a little look over into *France*: there shall we find the poor men of our Religion exposed to the furie of an enraged King, with a juster pretence against them then hath been at any time heretofore: besides, which is worse, the Kings of *Spain* and *France* are united against them and us, and made better friends then ever they meant to have been. So that not to succour and support the Professours of our Religion, will not only be infidelity and cruelty, but improvidence and folly; for their ill is ours.

If *Rochel* should be lost, which is now in loosing, and his *Majesty* not able to set out one ship to help it, if it should be lost, it would hazzard the totall extirpation of the Religion, besides it would be an extraordinarie advantage to the King of *France* for shipping, and as great a disadvantage to us in respect of the neighbourhood: and if the *Sound* should be lost too, whereby should we escape from being swallowed up by a *Spanish* invasion? this Island would be more like to a prison then a Kingdome, for we were not able to walke abroad.

These are dangers too many; yet have I willingly abridged them, for I had rather come to the remedy, so should we all: which consists only in money plentifully and speedily brought in, wisely and ju-



diciously laid out. I doubt not but wee are all resolved to give : wherefore, Mr Speaker, let us prepare our selves to give plentifully, to satisfie the publick occasions, to heave his *Majesty* out of necessity ; for necessity is the worst Counseller, and I shall be verie sorry that we of all others should be guilty of placing ill Counsell about the King : and now to think of sparing when all lies at the stake, were the most undoing kind of prodigality.

Let us give speedily, for delaie is the greatest danger of all dangers, it will not only loose that which we give, but that also which we would give. And this I propound not as the Kings businesse, but our way wherein every man in this house hath particular interest, if his fortune, his life, his religion be any thing unto him. Neither speak I this to divert the great businesse in hand, but to hasten it ; for I love as well, Mr Speaker, to tread upon *English* ground, as any man here doth.

*The King's Message to the House of Commons by Mr Speaker, 12 April, 1628.*

**H**is *Majesty* having given timely notice to this House as well of the pressing of the time, as of the necessity of supply, hath long since expected some fruit of that which was so happily begun ; but finding an unexpected stop, almost beyond all expectation, after so good a beginning, hath commanded me to tell you that without any further unnecessary delay you proceed with his businesses : for however he hath been willing and consenting his affaires and ours should concur and proceed together ; yet his meaning was not that one should give interruption to another, nor the time to be spunne out upon any pretence, upon which the common cause of *Christendome* doth so much depend. He bids us therefore to take heed, and force not him to make an unpleasing end of that which hath been so well begun.

*The Petition concerning the billeting of Souldiers,  
14 April, 1628.*

To the Kings most Excellent Majesty.

**I**N all humility complaining, shew unto your most excellent *Majesty* your loyall and dutifull Commons now in Parliament assembled, That whereas by the fundamentall Lawes of this your Realme, every free-man hath, and of right ought to have a full and absolute propriety in his goods and estate, and that therefore the billeting and placing of Souldiers in the houses of any such free-man against his will is directly contrarie to the said Lawes, under which we and our Ancestours have been so long and happily governed: yet in apparent violation of the said ancient and undoubted right of all your *Majesties* most loyall Subjects of this your Kingdome in generall, and to the grievous and insupportable vexation and detriment of many Countreys and persons in particular, a new, and heretofore almost unheard of way hath been invented, and put in practise, to lay Souldiers upon them, scattered in Companies here and there, even in the heart and bowels of this Kingdome, and to compell many of your *Majesties* Subjects to receive and lodge them in their own houses, and both themselves and others to contribute towards the maintenance of them, to the exceeding great disservice of your *Majesty*, to the generall terrour of all, and utter undoing of many of your poor people. Insomuch that we cannot sufficiently, nor in any sort proportionable to the lively sense that we have of our miserie herein, are we able to represent unto your *Majesty* the innumerable mischiefs and continuall vexations that by this meanes alone we do now suffer, whereof we will not presume to trouble your sacred cares with particular instances. Only (most gracious Sovereign) we beg leave to offer unto your gracious view and compassionate Consideration a few of them in generall.

First, The service of almighty God is hereby greatly hindred, the people in many places not daring to repair to the Churches, least the Souldiers in the mean time should rife their houses.

2. The ancient and good government of the Countrey is hereby neglected and contemned.

3. Your Officers of Justice in performance of their duties have been resisted and indangered.

4. The rents and revenues of your Gentry greatly and generally diminished, Farmers to secure themselves from the Souldiers insolencie, being by the clamours and solicitation of their fearfull and injured wives and children inforced to give up their wonted dwellings, and to retire themselves into places of more secure habitation.

5. Husbandmen, that are as it were the hands of the Countrey, corrupted



rupted by ill example of the Souldiers, and encouraged to idle life, give over work, and rather seek to live idly at another mans charge, then by their own labours.

6. Tradesmen and Artificers almost discouraged, being inforced to leave their trades, and to imploy their time in preserving themselves and their families from violence and cruelty.

7. Markets unfrequented, and our wayes grown so dangerous, that your people dare not passe to and fro upon their usuall occasions.

8. Frequent robberies, assaults, batteries, burglaries, rapes, rapines, murthers, barbarous cruelties, and other most abominable vices and outrages are generally complained of from all parts, where these Companies have been and had their abode, few of which insolencies have been so much as questioned, and fewer according to their demerits punished.

These and many other lamentable effects, most dread and dear Sovereign, have by this billeting of Souldiers fallen upon your loyall Subjects, tending no lesse to the disservice of your *Majesty*, then to their own impoverishing and destruction: so that they are thereby exceedingly disabled to yield your *Majesty* those supplies for your urgent occasions which they heartily desire. And yet they are further perplexed with apprehension of more approaching dangers, one in regard of your Subjects at home, and the other from Enemies abroad. In both which respects it seems to threaten no small Calamitie.

For the first, the meaner sort of your people being exceeding poor (whereof in many places be great multitudes) and therefore in times of most settled and constant administration of Justice not easily ruled, are most apt upon this occasion to cast off the reines of government, and by joyning themselves with these disordred Souldiers, are very likely to fall into mutinie and rebellion; which in faithfull discharge of our duties we cannot forbear most humbly to present to your high and excellent Wisdome, being prest with probable feares that some such mischief will shortly ensue, if an effectuall and speedie course be not taken to remove out of the land, or else otherwise to disband those unruly Companies.

For the second, we do most humbly beseech your *Majesty* to take into your Princely consideration, that many of these Companies, besides their dissolute dispositions and carriages, are such as do openly professe themselves to be *Papists*, and therefore to be suspected, that if occasion serve they will rather adhere to a forreign Enemy of that Religion, then to your *Majestie* their liege Lord and Sovereign; especially some of their Captaines and Commanders being as Popishlie affected as themselves, and having served in the warres in the behalf of the King of *Spain* and the *Arch-Dutchesse* against your *Majesties* Allyes: which of what pernicious consequence it may prove, and how prejudiciall to the safety of all your Kingdome, we humbly leave to your *Majesties* high and Princely Wisdome.

And

And now upon this and many more (which might be alledged) most weightie and important reasons, grounded upon the maintenance of the worship and service of almightie God, the continuance and advancement of your *Majesties* high honour and profit, the preservation of the ancient and undoubted Liberties of your people, and therein of Justice and Industrie and Valour, which clearly concernes the glorie and happinesse of your *Majesty* and all your Subjects, and the preventing of imminent calamities and ruine both of Church and Commonwealth ; we your *Majesties* most humble and loyall Subjects, the Knights, Citizens and Burgessees of your House of Commons, in the name of all the Commonaltie of the Kingdome, who are upon this occasion most miserable, disconsolate and afflicted, prostrate at the throne of your Grace and Justice, do most humbly and ardently beg a present remove of this insupportable burthen, and that your *Majesty* would be graciously pleased to secure us from the like pressure for time to come.

*The nine Heads of the House of Commons to the Speaker.*

1. **T**hat it is the ancient right of Parliament, to dispose of matters there debated in their own method.

2. That it is their ancient custome, to consider of Grievances before matters of Supplie.

3 That yet neverthelesse in this Parliament, to expresse our affection to his *Majesty*, contrarie to ordinarie proceedings, we have proceeded in the Supply as farre as we could in that Committee,

4. That we have been so farre from delaying, that post-posing the common and pressing grievances, we have given precedencie to the supply, joyning with it only the fundamentall and vitall Liberties of the Kingdome that give substance to the Subjects.

5. Further to expresse the fulnesse of our affections, we have exceeded our order in that particular concerning the supplie, which, though later in proposition, yet hath been first made readie for conclusion in the Committee.

6. No person or Councill can be greater lovers of, or more carefull to maintain the sacred Rights and Prerogatives of the Crown then we : and we do conceive that the maintaining of the fundamentall Rights and Liberties of the Subject is an especiall meanes to establish the glory of a *Monarch*, and that by it his Subjects are the better enabled to do him service, which hath been the cause of many glorious victories wone by this Nation above other Kingdomes of larger territories and greater number of people.

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7. What information is given to his *Majesty* contrary to this, doth proceed from such persons as ( to serve their own ends ) under colour of advancing his *Majesties* Prerogative, do weaken Royall power.

8. We trust to be cleared in his *Majesties* judgement, that there hath been no unnecessary stop, but a most cheerfull proceeding in the matter of Supply ; and therefore we do humbly desire that his *Majesty* will take no information in this or any other businesse from private relations, but to judge of our proceedings by the resolution that shall be presented to his *Majestie* from the House.

9. Being thus rightly and graciously understood , we assure our selves that the end of this Parliament shall be more happy then the beginning.

*The Speaker Sir John Finche's Speech, upon the  
9 Heads, 14. April, 1628.*

Most Gracious and dread *Sovereign* ,

**Y** Our dutifull and loyall Commons here assembled were lately humble Suitours for accessse to your Royall presence. The occasion that moved their desires herein was a particle of importance worthy your Princely Consideration, and which ( as it well deserves ) should have been the only subject of my Speech at this time. But since your gracious answer for this accessse obtained, by a Message from your *Majestie*, they have had some cause to doubt that your *Majestie* is not so well satisfied with the manner of their proceedings, as their heartie desire is you should be ; especially in that part which concernes your *Majesties* present Supply ; as if in the prosecution thereof they had of late used some slacknesse or delay.

And because no unhappinesse of theirs can parallell with that which may proceed from a misunderstanding in your *Majestie* of their cleer and loyall intentions, they have commanded me to attend your *Majestie* with an humble and summarie declaration of their proceedings since this short time of their sitting, which they hope will give your *Majestie* abundant satisfaction, that never people did more truly desire to be endeared in the favour and gracious opinion of their *Sovereign*. And withall to let your *Majestie* see, that as you can no where have a more faithfull Councell, so your great designs and occasions can no way be so speedily or heartily supported as in this old and ancient way of Parliament.

For this purpose they humbly beseech your *Majestie* to take into your Royall Consideration, that although by ancient right of Parliament,

ment, the matters there debated are to be disposed in their true method and order, and that their constant custome hath been to take into their consideration the common Grievances of the Kingdome before they enter upon matter of Supplie ; yet to make a full expression of that zeal and affection which they beare to your Royall Person, ( equalling at least, if not exceeding the best affections of their predeceffours to the best of your Progenitours ) they have in this Assemblie, contrary to ordinary proceeding in Parliament, given your *Majesties* supply precedence before the common Grievances of the Subject, how pressing soever ; joyning only with it those fundamentall and vitall Liberties of the Kingdome, which give subsistence and ability to your Subjects.

This was their originall order and resolution, and was grounded upon a true discerning that these two considerations could not be severed, but did both of them intirely concern your *Majesties* service, consisting no lesse in encouraging and inabling your Subjects, then in proportioning a Present suting to your *Majesties* occasions and their own abilities.

Nay, so farre have they been from using any unnecessary delaies, as that though of the two that of Supply were later in proposition amongst them, yet the Grand Committee ( to which both were referred ) have made that of your *Majesties* Supply first ready for conclusion. And to be sure your *Majesties* Supply might receive no interruption, they ( differing from custome and usage in cases of this nature ) sent up of those that concern the Subject by parcels, some to your *Majestie* and some to the Lords, to the end your *Majestie* may receive such speedy content, as sutes with the largest and best extent of their first order.

Sir, you are the breath of our nostrils and the light of our eyes ; and besides the many Comforts which under you and your Royall Progenitours in this frame of Government this Nation hath enjoyed, the Religion we professe hath taught us whose Image you are. And we do all most humbly declare to your *Majestie* that nothing is or can be more deare unto us then the sacred Rights and Prerogatives of your Crown, no Person or Councell can be greater lovers of them, nor more truly carefull to maintain them.

And the fundamentall Liberties which concern the freedome of our persons and propriety of our goods and estates, are an essentiall meanes to establish the true glorie of a Monarch : for rich and free Subjects as they are best governed, so they are most able to do your *Majestie* service, either in peace or warre ; which under God hath been the cause of the happie victories of this Nation beyond other Kingdomes of larger Territories and greater numbers of people.

What information soever contrarie to this shall be brought to your *Majestie*, can come from no other then such as for their own ends, under colour of advancing the Prerogative, do in truth undermine and weaken Royall Power, and by impoverishing the Subject, render this Monarchie lesse glorious, and the people lesse able to serve your *Majestie*.



Having by this which hath been said cleared our hearts and proceedings to your *Majesty*, our trust is that in your Royall Judgement we shall be free from the least opinion of giving any unnecessary stop to our proceeding in the matter of Supply, and that your *Majesty* will be pleased to entertain belief of our alacritie and cheerfulness in your service, and that hereafter no such misfortune shall befall us to be misunderstood by your *Majesty* in any thing. We all most humbly beseech your *Majesty* to receive no information, either in this or any other business, from private relations, but to weigh and judge of our proceedings by those resolutions of the House, which shall be presented from our selves.

This rightly and graciously understood, we are confident from the knowledge of your goodness and our own hearts, that the ending of this Parliament shall be much more happy then the beginning, and that it shall be stiled to all ages *The Blessed Parliament*, which making perfect union betwixt the best people, your *Majesty* may ever delight in calling us together, and we in the Comforts of your Gracious Favour towards us.

In this hope I return to my first errand, which will best appear by that which I shall humbly desire your *Majesty* to hear read, being an humble *Petition* from the House of Commons, for redresse of those many inconveniences and distractions that have befallen your Subjects, by the billeting of Souldiers.

Your Royall Progenitors have ever held their Subjects hearts the best Garrison of this Kingdome. And our humble suit to your *Majesty* is, that our Faith and Loyalty may have such place in your Royall thoughts, as to rest assured that all your Subjects will be ready to lay down their lives for the defence of your Sacred Person and this Kingdome.

Not going our selves into our Countreys this *Easter*, we should think it a great happiness to us, and we know it would be a singular comfort and encouragement to them that sent us hither, if we might but send them the newes of a gracious Answer from your *Majesty* in this particular, which the reasons of the Petition, we hope, will move your most excellent *Majesty* graciously to vouchsafe us.

The King's

The King's Answer to the Petition concerning bil-  
letting of Souldiers, 14 April, 1628.

Mr Speaker, and you Gentlemen,

**W**Hen I sent you my last message, I did not expect any Reply, for I intended to hasten you, not to find fault with you. I told you at your first meeting that this time was not to be spent in words, and I am sure it is lesse fit for disputes; which if I had a desire to entertain, Mr Speaker's Preamble might give me ground enough.

The Question is not now what Libertie you have in disposing of matters handled in your House, but rather what is fit to be done. Therefore I hope you will follow my example in eschewing disputations, and fall to your important businesse.

You make a protestation of your affections and zeal to my Prerogative, grounded upon so good and just reasons, that I must believe you. But I look that you use me with the like charitie, to believe what I have delivered more then once since your meeting, which is, That I am as forward as you for the preservation of your true Liberties: yet let us not spend so much time in this, that may hazzard both my Prerogative and your Liberties to our Enemies.

To be short, go on speedily with your businesse, without fear or more Apologies, for time calls fast on you, which will neither stay for me nor you.



*Wherefore it is my dutie to presse you to hasten, as knowing the necessity of it ; and yours to give credit to what I say, as to him that sitteth at the Helme.*

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*Sir Dudley Diggs his Introduction.*

*My Lords,*

**I** Shall ( I hope ) auspiciously begin this Conference this day with an Observation out of Holy Story. In the dayes of good King *Josiah*, when the Land was purged of Idolatry, and the great men went about to repaire the House of God, while money was sought for, there was found a Book of the Law, which had been neglected, and afterwards being presented to the good King, procured the blessing which your Lordships may read of in the *Scriptures*.  
2 Chro. cap. 34.  
 2 Kings cap. 22.

My good Lords, I am confident your Lordships will as cheerfully joyn with the Commons in acknowledgement of Gods great blessing in our good King *Josiah*, as the Knights, Citizens and Burgeses of the Commons House by me ( their unworthy servant ) do thankfully remember your most religious and truly honourable invitation of them to the late Petition for clensing this Land from Popish Abominations, which I may truly call a necessary and happy repairing of the House of God. And to go on with the parallell, while we the Commons out of our good affection were seeking for money, we found, I cannot say a book of the Law, but many, and those fundamentall, points thereof neglected and broken; which hath occasioned our desire of this Conference.

Wherein I am first commanded to shew unto your Lordships in generall, that the Lawes of *England* are grounded on reason ancients then bookes, consisting much in unwritten Customes; yet so full of Justice and true Equity, that your most honourable Predecessours and Ancestours many times propugned them with a *Nolumus Mutare*; and so ancient, that from the *Saxons* daies, notwithstanding the Injuries and Ruines of Time, they have continued in most parts the same; as may appear in old remaining Monuments of the Lawes of *Ethelbert* the first Christian King of Kent, *Ina* King of the West-Saxones, *Offa* of the *Mercians*, and of *Alfred* the great Monarch, who united the *Saxon* Heptarchie, whose Laws are yet to be seen, published (as some think) by *Parliament*, as he sayes, to that end, *ut qui*  
*sub*

*sub uno Rege, sub una Lege regerentur.* [ Liber Lichfield. ]

And though the book of *Lichfield*, speaking of the troublesome times of the *Danes*, saies that then, *Jus sepitum erat in Regno, Leges & consuetudines septa sunt*, and *prava voluntas, vis & violentia magis regnabant quam Judicia vel Justitia*: yet by the blessing of God a good King *Edward*, commonly called *S. Edward*, did awaken these Lawes, *Excitatas reparavit, reparatas decoravit, decoratas confirmavit*. which *confirmavit* sheweth that good King *Edward* did not give those Lawes, which *William the Conquerour* and all his Successours sithence that have sworn unto.

Liber de Chars-  
sey, five Regi-  
Arum de Chirt-  
sey.

And here, my Lords, by many Cases frequent in our Modern Lawes, strongly concurring with those of the ancient *Saxon* Kings, I might (if time were not precious) demonstrate that our Lawes and Customes were the same. I will only intreat your Lordships leave to tell you, that as we have now, even in those *Saxon* times they had their *Courts Barons* and *Courts Leets* and *Sheriffs Courts*, by which (as *Tacitus* saith of the *Germans*) their Ancestours *Jura reddebant per pagos & vicos*. And I believe as we have now, they had their *Parliaments*, where new Lawes were made *cum consensu Pralatorum, Magnatum & totius Communitatis*; or, as another writes, *cum consilio Pralatorum, Nobilium & sapientum Laicorum*.

I will adde nothing out of *Glanvile*, that wrote in the time of *Henry* the second, or *Bracton* that writ in the time of *Henry* the third: only give me leave to cite that of *Fortescue* the learned *Chancellor* to *Hen. 6.* who writing of this Kingdome saith, *Regnum illud in omnibus Nationum & Regum temporibus, eisdem quibus nunc regitur legibus & consuetudinibus, regebatur*.

De Dom. po-  
lit. et regal.

But, my good Lords, as the Poet saith of *Fame*, I may say of our Common Law,

*Ingreditur solo, caput inter nubila condit.* Wherefore the cloudy part being mine, I will make haste to open way for your Lordships to heare more certain Arguments, and such as go on surer grounds.

Virgil.

Be pleased then to know, that it is an undoubted and fundamentall point of this so ancient Common Law of *England*, that the Subject hath a true Proprietie in his goods and possessions, which doth preserve as sacred that *meum* and *tuum* that is the Nurse of Industrie, the Mother of Courage, and without which there can be no Justice, of which *meum* and *tuum* is the proper object.

But this undoubted Birthright of free Subjects hath latelie not a little been invaded & prejudiced by pressures, the more grievous because they have been pursued by Imprisonments, contrary to the Franchise of this Land. And when according to the Lawes and Statutes of this Realm redresse hath been sought for in a legall way, by demanding *Habeas Corpus* from the Judges, and a discharge or triall according to the Law of the Land, successe hath failed; which hath now inforced  
the



the Commons in this present Parliament assembled to examine by Acts of Parliaments, Presidents and Reasons, the truth of *English* Subjects Liberties: which I shall leave to learned Gentlemen, whose weightie Arguments I hope will leave no place in your Lordships memories for the errours and infirmities of your humblest Servant, that doth thankfully acknowledge the great favour of your most honourable and patient attention.

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*The Argument made by M<sup>r</sup> Littleton at the command of the House of Commons, out of Acts of Parliament and Authorities of Law expounding the same, at the first Conference with the Lords concerning the Liberty of the Person of every Free-man.*

My Lords,

UPON the occasions delivered by the Gentleman that last spake, your Lordships have heard the Commons have taken into their serious Consideration the matter of Personall Libertie; and after long debate thereof on divers dayes, as well by solemn Arguments as single propositions of doubts and answers, to the end no scruple might remaine in any mans breast unsatisfied, they have upon a full search and cleer understanding of all things pertinent to the Question, unanimously declared That no Free-man ought to be committed or detained in prison, or otherwise restrained by the command of the King, or the Privie Councell, or any other, unlesse some cause of the commitment, detainer or restraint be expressed, for which by Law he ought to be committed, detained or restrained. And they have sent me with some other of their Members to represent unto your Lordships the true grounds of such their resolutions, and have charged me particularly (leaving the reasons of Law and Presidents for others) to give your Lordships satisfaction that this Libertie is established and confirmed by the whole State, the King, the Lords Spirituall and Temporall, and the Commons, by severall Acts of Parliament. The authority whereof is so great, that it can receive no answer, save by interpretation or repeal by future Statutes. And these that I shall mind your Lordships of are so direct to the point, that they can bear no other exposition at all; and sure I am they are still in force.

The first of them is the *Grand Charter* of the Liberties of *England*, first granted in the 17 yeare of King *John*, and renewed in the 9 yeare of

of King *Hen. 3.* and since confirmed in Parliament above 30 times. *Cap. 29.* the words are these. *Nullus liber homo capiatur, vel imprisonetur, aut disceissetur de libero tenemento suo, vel libertatibus, vel liberis consuetudinibus suis, aut utlagetur, aut exuletur, aut aliquo modo destratur; nec super eum ibimus, nec super eum mittemus, nisi per legale iudicium parium suorum, vel per legem terra.* These words *Nullus liber homo, &c.* are expresse enough: yet it is remarkable that *Matthew Paris* an Authour of speciall credit, doth observe *fo. 432.* that the Charter of the *9. H. 3.* was the very same as that of the *17.* of King *John*, in nullo dissimiles, are his words; and that of King *John* he setteth down verbatim *fol. 342.* and there the words are directlie *Nec eum in carcerem mittemus:* and such a corruption as is now in the print might easily happen 'twixt *9. H. 3.* and *28. E. 1.* when this Charter was first exemplified.

But certainly there is sufficient left in that which is extant to decide this question; for the words are, That no Free-man shall be taken or imprisoned but by the lawfull judgement of his Peeres; which is by Jury, Peeres for *Pares*, ordinary Jurours for others who are their Peeres; or by the Law of the Land. Which words *Law of the Land*, must of necessity be understood in this Nation to be by due proceffe of Law, and not the Law of the Land generally; otherwise it would comprehend Bond-men, whom we call Villains, which are excluded by the word *liber*; for the generall Law of the Land doth allow their Lords to imprison them at pleasure without cause, wherein they only differ from the Free-men, in respect of their persons, who cannot be imprisoned without a cause. And that this is the true understanding of those words *per legem terra*, will more plainly appear by divers other Statutes that I shall use, which do expound the same accordingly.

And although the words of this Grand Charter be spoken in the third person, yet they are to be understood of Suites betwixt partie and partie, at least not of them alone, but even of the Kings Suites against his Subjects; as will appear by the occasion of the getting of that Charter, which was by reason of the differences betwixt those Kings and their people: and therefore properlie to be applyed to their power over them, and not to ordinarie questions 'twixt Subject and Subject.

The words *per legale iudicium parium suorum* immediately preceding the other *per legem terra*, are meant of trialls at the Kings Suit, and not at the prosecution of a Subject. And therefore if a Peer of the Realm be arraigned at the Suit of the King upon any Indictment of Murther, he shall be tried by his Peeres, that is Nobles: But if he be appealed of Murther by a Subject, his triall shall be by an ordinarie Jury of 12 Free-holders; as appeareth in *10. Edm. 4.* It is said such is the meaning of *Magna Charta*. By the same reason therefore as *per iudicium parium suorum* extends to the Kings Suit, so shall these words *per legem terra*.

And in *8. E. 2. Rot. Parliam. num. 7.* there is a Petition, that a  
I Writ



Writ made under the Privie Seal went to the Guardians of the Great Seal to cause lands to be seized into the Kings hands; by force of which there went a Writ out of the Chauncery to the Exchequer to seize against the forme of the Grand Charter, That the King or his Ministers shall out-law no man of Free-hold without reasonable Judgement: And the partie was restored to his land. Which sheweth the Statute did extend to the King.

There was no invasion upon this personall liberty, till the time of King *Edw.* the 3. which was soon restrained by the Subject. For in the 5. *E. 3. cap. 9.* it is ordained in these words; It is enacted that no man from henceforth shall be attached by any accusation, nor forejudged of life or limbe, nor his lands, tenements, goods nor cattells seized into the Kings hands against the forme of the great Charter. And the Law of the Land 25. *E. 3. cap. 4.* is more full, and doth expound the words of the Grand Charter, and it is thus; Whereas it is contained in the great Charter of the Franchises of *England*, That no Free-man be imprisoned, or put out of his Free-hold, nor of his Franchise nor Free Custome, unlesse it be by the Law of the Land: it is accorded, assented and established, that from henceforth none shall be taken by petition or suggestion made unto our Lord the King, or to his Councell, unlesse it be by indictment or presentment of his good and lawfull people of the same neighbourhood where such deeds be done, in due manner, or by proceffe made by Writ originall at the Common Law; nor that none be out of his Franchises or of his Free-hold, unlesse he be due-ly brought into answer, and forejudged of the same by course of Law: and if any thing be done against the same, it shall be redressed and held for null.

Out of this Statute I observe that what in *Magna Charta* and the Preamble of this Statute is termed by the Law of the Land, is in the body of this Act expounded to be by proceffe made by Writ originall at the Common Law; which is a plain interpretation of the words *Law of the Land*, in the grand Charter. And I note that this Law was made upon the commitment of divers to the Tower, no man yet knoweth for what.

The 28. *E. 3.* is yet more direct, (this Libertie being followed with fresh suite by the Subject;) where the words are not many but very full and significant: That no man, of what estate or condition he be, shall be put out of his lands or Tenement, nor taken nor imprisoned, nor disinherited, nor put to death, without he be brought into answer by due proceffe of the Law. Here your Lordships see the usuall words of the Law of the Land are rendered by due proceffe of the Law.

36. *E. 3. Rot. Parliam. num. 9.* amongst the Petitions of the Commons, one of them being translated into *English* out of the *French*, is thus, First that the great Charter, and the Charter of the Forrest, and the other Statutes made in his time and the time of his Progenitours, for the profit of him and his Commonaltie, be well and firmly kept, and put in

in due execution, without putting disturbance, or making arrest contrarie to them by speciall command, or in any other. The answer to the Petition, which makes it an Act of Parliament, is, Our Lord the King by the assent of the Prelates, Dukes, Earles, Barons, and the Commonaltie, hath ordained and established that the said Charters and Statutes be held and put in execution according to the said Petition; which is, that no arrest should be made contrarie to the Statutes by speciall command.

This concludes the Question, and is of as great force as if it were printed. For the Parliament *Roll* is the true warrant of an Act, and many are omitted out of the books that are extant.

36. *E. 3. Rot. Parliament. num. 20.* explaineth it further: for there the Petition is, Whereas it is contained in the Grand Charter and other Statutes, that none be taken or imprisoned by speciall command without indictment, or other due processe to be made by the Law; yet oftentimes it hath been and still is, that many are hindred, taken and imprisoned without indictment, or other processe made by the Law upon them, as well of things done out of the Forrest of the King, as for other things; That it would therefore please our said Lord to command those to be delivered which are so taken by speciall Command, against the forme of the Charters and Statutes aforesaid. The answer is, The King is pleased, if any man find himself grieved, that he come and make his complaint, and right shall be done unto him.

37. *E. 3. cap. 18.* agreeth in substance, when it saith, Though that it be contained in the great Charter, that no man be imprisoned, nor put out of his Freehold without processe of the Law; neverthelesse divers people make false suggestions to the King himself, as well for malice as otherwise, whereat the King is often grieved, and divers of the Realme put in damage, against the forme of the said Charter. Wherefore it is ordained that all they which make such suggestions be sent with the suggestions before the Chauncellour, Treasurer, and the grand Councell; and that they there find suretie to pursue their suggestions, and incurre the same paine that the other should have had (if he were attainted) in case that their suggestions be found evil; and that then processe of the Law be made against them, without being taken and imprisoned against the forme of the said Charter and other Statutes. Here the Law of the Land in the grand Charter is explained, to be without processe of the Law.

42. *E. 3. ca. 3.* At the request of the Commons by their Petitions put forth in this Parliament, to eschew mischiefs and damage done to divers of his Commons by false accusers, which oftentimes have made their accusation more for revenge and singular benefit, then for the profit of the King, or of his people, which accused persons some have been taken, and sometimes caused to come before the Kings Councell by writ and otherwise upon grievous paine against the Law; It is assented and accorded, for the good governance of the Com-



mons, that no man be put to answer without presentment before Justices, or matter of Record, or by due processe, or writ originall, according to the old Law of the Land. And if any thing henceforth be done to the contrary, it shall be void in Law, and holden for error.

But this is better in the Parliament Roll; where the Petition and Answer, which make the Act, are set down at large, 42. E. 3. Rot. Parliament. 7477. 12.

*The Petition.*

Because that many of the Commons are hurt and destroyed by false accusers, who make their accusations more for their revenge and particular gaine, then for the profit of the King or his people, and those that are accused by them some have been taken, and others have been made to come before the Kings Councill by writ or other Commandment of the King upon grievous paines, contrary to the Law; That it would please our Lord the King and his good Councill, for the just government of his people, to ordain that if hereafter any accuser propose any matter for the profit of the King, that the same matter be sent to the Justices of the one Bench or the other, or the affaires to be enquired and determined according to the Law: And if it concern the accuser or partie, that he take his suit at the Common Law; and that no man be put to answer without presentment before Justices, or matter of Record, and by due processe & originall writ according to the ancient Law of the Land. And if any thing henceforward be done to the contrarie, that it be void in Law, and held for error.

Here by due processe and originall writ according to the Law of the Land, is meant the same thing as *per legem terra* in *Magna Charta*, and the abuse was they were put to answer by the commandment of the King.

*The Kings Answer is thus.*

Because that this article is an article of the Grand Charter, the King wills that this be done as the Petition doth demand.

By this it appeareth that *per legem terra* in *Magna Charta*, is meant by due processe of the Law.

Thus your Lordships have heard Acts of Parliament in the point. But the Statute of *Westm.* the 1. ca. 15. is urged to disprove this opinion, where it is expressly said, That a man is not replevisable who is committed by the command of the King, without any cause shewn, which is therefore sufficient to commit a man to prison. And because the strength of the Argument may appeares and the answer be better understood, I shall read the words of the Statute, which is thus.

And for as much as Sheriffs and others have taken and kept in prison such as were replevisable, and have let out by plevin such as were not replevisable, because they would gaine of the one partie, and  
grieve

grieve the other ; And forasmuch as before this time it was not certainly determined what persons were replevisable and what not, but only those that were taken for the death of a man, or by Commandment of the King, or of his Justices, or for the Forrest ; It is provided, and by the King commanded, that such prisoners as were before outlawed, and they which have abjured the Realme, Provors, and such as be taken with the manner, and those which have broken the Kings prison, Thieves openly defamed and known, and such as be appealed by Provors so long as the Provor be living, if they be not of good name, and such as be taken for burning of houses, feloniously done, or for false money, or for counterfeiting the Kings Seal, or persons excommunicated taken at the request of the Bishops, or for manifest offences, or for Treason touching the King himself, shall be in no case replevisable by the common writ or without writ.

But such as be indicted of larceny by inquests taken before Sheriffs or Bailiffs by their office, or for light suspicion, or for petty-larceny that amounteth not to above the value of 12 pence, if they were not guilty of some other larceny aforetime, or guilty of receipt of fellows, or of commandment or force or of aid in felony done, or guilty of some other trespass for which one ought not to loose life or member, and a man appealed by a Provor after the death of a Provor, if he be no common thief, or defamed ; shall from henceforth be let out by sufficient suretie, whereof the Sheriff will be answerable, and that without giving ought of their goods.

And if the Sheriff or any other let any go at large by suretie that is not replevisable, if he be Sheriff or Constable, or any Bailiffe of fee which hath keeping of prisoners, and thereof be attainted, he shall loose his fee and office for ever.

And if the under-Sheriff, Constable or Bailiffe, of such as have fee for keeping of prisons do it contrarie to the will of his Lord, or any other Bailiffe being not of fee, they shall have three yeares imprisonment, and make Fine at the Kings pleasure. And if any hold prisoners replevisable after they have offered sufficient sureties, he shall pay a grievous amercement to the King. And if he take any reward for the deliverance of such, he shall pay double to the prisoner, and also shall pay a grievous amercement to the King.

*The Answer.*

It must be acknowledged that a man taken by the Commandment of the King is not replevisable, for so are the expresse words of this Statute. But this maketh nothing against the Declaration of the House of Commons, for they say not that the Sheriff may replevy such a man by sureties (*scilicet Manuceptores*) but that he isailable by the Kings Court of Justice.

For the better understanding whereof, it is to be known that there is a difference betwixt replevisable, which is alwayes by the Sheriffup-



on pledges or sureties given, and bailable, which is by Court of Record, where the prisoner is delivered to his Baile, and they are his Gaolers, and may imprison him, and shall suffer for him bodie for bodie, as appeareth 33. and 36. 83. in the title of *Mainprize* p. 12. 13. where the difference betwixt Baile and Mainprize is expressly taken.

And if the words of the Statutes themselves be observed, it will appeare plainly that it extends to the Sheriffs and other inferiour Officers, and doth not bind the hands of the Judges.

The Preamble, which is the key which openeth the entrance into the meaning of the makers of the Law, is,

Forasmuch as Sheriffs and others which have taken and kept in prison persons detected of felony. Out of these words I observe that it nominateth Sheriffs, and then if the Justices should be included, they must be comprehended under the generall word *other*, which doth not use to extend to those of a higher rank, but to inferiours: for the best by all course is first to be named; And therefore if a man bring a Writ of Customes and Services, and name Rents and other things, the generall shall not include Homage, which is a personall service and of a higher nature; but it shall extend to ordinarie annuall services, 31. E. 1. *Droit*. So the Statute of 13. *Eliz. cap. 10.* which beginneth with *Colledges, Deanes and Chapters, Parsons, Vicars,* and concludes with these words, and others having spirituall promotions; shall not comprehend Bishops, that are of a higher degree; as appeares in the Archbishop of *Canterburies* Case reported By *S<sup>r</sup> Edw. Coke lib. 2. fo. 46.*

And thus much is explained in this verie Statute towards the end, when it doth enumerate those were meant by the word *other*, namely under-Sheriffs, Constables, Bailiffs.

Again the words are Sheriffs and others which have taken and kept in prison: now every man knoweth Judges do neither arrest nor keep men in prison, that is the office of Sheriffs, and other inferiour Ministers: therefore this Statute meant such only, and not Judges.

The words are further, that they let out by replevine such as were not replevisable; that is the proper language for a Sheriff. Nay more expresse afterward in the bodie of the Statute, that such as are there mentioned shall be in no case replevisable by the common writ (which is *de homine replegiando*, and is directed to the Sheriff) nor without writ which is by the Sheriff *ex officio*. But that which receives no answer is this;

That the command of the Justices who derive their authorities from the Crown, is there equall as to this purpose with the command of the King. And therefore by all reasonable construction it must needs relate to Officers subordinate to both, as Sheriffs, under-Sheriffs, Bailiffs, Constables and the like. And it were an harsh exposition to say that the Justices might not discharge their own Command, and yet that reason would conclude as much. And that this was meant of the Sheriffs and other Ministers of Justice, appeareth by the recitall 27. E. 1. *cap. 3.*

And

And likewise by *Fleta*, a Manuscript so called because the Authour lay in the *Fleet* when he made the book: for he *lib. 2. cap. 52.* in his *cap.* of Turnes and the views of the Hundred Courts in the Countrey, sets down the Articles of the Charges that are there to be enquired of; amongst which one of them is *de replegiabilibus injuste detentis*, or *irreplegiabilibus dimissis*: which cannot be meant of not bailing by the Justices; for what have the inferiour Courts in the Countrey to do with the Acts of the Justices?

And to make it more plain, he setteth down in this Chapter (that concernes Sheriffs only) the very Statute of *Westm. cap. 15.* which he translates *verbatim* out of the *French* into the *Latin*, save that he renders taken by the command of the Justices thus, *per Judicium Justitiariorum*: and his Preface to the Statute plainly sheweth, that he understood it of replevine by Sheriffs, for he saith, *Qui debent per plegios dimitti, qui non, declarat hoc Statutum*; and *per plegios* is before the Sheriff.

But for direct authoritie, it is the opinion of *Newton* the Chief Justice in *22. H. 6. 46.* where his words are these, It cannot be intended that the Sheriff did suffer him to go at large by mainprize, for where one is taken by the writ of the King or the command of the King, he is irreplevisable; but in such case his friends may come to the Justices for him, if he be arrested, and purchase a *superfedeas*. So he declares the very Question, That the Sheriffs had no power, but that the Justices had power to deliver him that is committed by the Kings Command. And both the ancient and modern practise manifests as much; for he that is taken for the death of a man, or for the Forrest, is not replevisable by the Sheriff, yet they are ordinarily bailed by the Justices, and were by the Kings writs directed to the Sheriffs in the times of *E. 1.* and *E. 2.* as appears in the Close Rolls, which could not be done if they were notailable. And it is every dayes experience that the Justices of the *Kings Bench* do baile for murther, and for offences done in the Forrest, which they could not do if the word irreplevisable in *Westm. 1.* were meant of the Justices as well as of the Sheriffs.

For the authorities which have been offered to prove the contrarie, they are in number 3. The first is *21. E. 1. Rot. 2.* which also is in the book of the Pleas in Parliament at the Tower *fol. 44.* It is not an Act of Parliament, but a resolution in Parliament upon an action there brought, which was usuall in those times; and the Case is, That *Stephen Rubar* the Sheriff of the Counties of *Leicester* and *Warwick*, was questioned for that he had let at large by sureties one *William* the son of *Walter le Parsons*, against the will and command of the King, when as the King had committed him by Letters under his Privie Seal, that he should do no favour to any man that was committed by the command of the Earle of *Warwick*, as that man was. Whereunto the Sheriff answered, that he did it at the request of some of the Kings household upon their Letters: and because the Sheriff did acknowledge the receipt of the Kings Letters, thereupon he was committed to prison, according to the forme of the Statute.

To



To this I answer, that he was justly punished, for that he is expressly bound by the Statute *Westm. 1.* which was agreed from the beginning. But this is no proof that the Judges had not power to baile this man.

The next Argument is 33. *H. 6.* in the Court of Common Pleas fol. 28. 29. where *Robert Poinings* Esq; was brought unto the Barre upon a *Capias*, and it was returned that he was committed *per duos de Consilio* (I believe it is misprinted for *Dnos de Consilio*, i. e. *Dominos de Consilio*, which is strongest against that which I maintain) *pro diversis causis Regem tangentibus*, and he made an Attorney there in an accusation, whence is inferred that the return was good, and the partie could not be delivered.

To this the Answer is plain.

1. No opinion is delivered in that book whether he were delivered or bailed, or not.

2. It appeares expressly that he was brought thither to be charged in an accusation of debt at another mans Suit, and no desire of his own to be delivered or bailed; and then if he were remanded, it is no way materiall to the question in hand.

But that which is most relied upon is, the opinion of *Stamford* in his book of the Pleas of the Crown lib. 2. ca. 18. fol. 72. 73. in his cap. of *Mainprize*, where he reciteth the Statute of *Westm. 1.* cap. 15. and then saith thus, By this Statute it appeareth that in 4 cases at the Common Law a man was not replevisable, to wit, those that were taken for the death of a man, by command of the King, or of his Justices, or for the Forrest. Thus farre he is most right. Then he goeth on and saith, As to the Command of the King, that is understood of the command of his own mouth, or his Councell which is incorporated unto him, and speake with his mouth, or otherwise every writ of *Capias* to take a man, which is the Kings command, would be as much. And as to the command of the Justices, that is meant their absolute command: for if it be their ordinarie commandment, he is replevisable by the Sheriff, if it be not in some of the Cases prohibited by the Statute.

The answer that I give unto this is, That *Stamford* hath said nothing whether a man may be committed without cause by the Kings command, or whether the Judges ought not to baile him in such case; but only that such a one is not replevisable: which is agreed, for that belongs to the Sheriff. And because no man should think he meant any such thing, he concludes his whole sentence touching the command of the King and his Justices, That one committed by the Justices ordinarie command is replevisable by the Sheriff. So either he meant all by the Sheriff, or at least it appeares not that he meant that a man committed by the King or the Privie Councell without cause is notailable by the Justices, and then he hath given no opinion in this case. What he would have said if he had been asked the question, cannot be known; neither doth it appeare by any thing he hath said, that he meant any such thing as would be inferred out of him.

And now, my Lords, I have performed the command of the Commons;

mons; and as I conceive, shall leave their declaration of personall Liberty on ancient and undoubted truth, fortified with 7 Acts of Parliament, and not opposed by any Statute or authoritie of Law whatsoever.

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*The Objections of the King's Councell, with the  
Answers made thereunto at the two Conferences  
touching the same matter.*

**I**T was agreed by Master *Attorney* generall, that the seven Statutes urged by the Commons were in force, and that *Magna Charta* did extend most properly to the King. But he said,

First, that some of them are in generall words, and therefore conclude nothing, but are to be expounded by the Presidents; and others that be more particular are applyed to the suggestions of Subjects, and not to the Kings Command simplie of it self.

Hereunto was answered, That the Statutes were as direct as could be, which appeareth by the reading of them: and that though some of them speak of suggestions of the Subject, yet others do not; and those that do are as effectually, for that they are in equall reason, a commitment by Command of the King being of as great force when it moveth by a suggestion from a Subject, as when the King takes notice of the cause himself; the rather for that Kings seldome intermeddle with matters of this nature, but by information from some of their Subjects.

Secondly, M<sup>r</sup> *Attorney* objected that *per legem terra* in *Magna Charta* (which is the foundation of this Question) cannot be understood for processe of the Law and originall Writs: for that in all Criminall proceedings no originall Writ is used at all, but every Constable may arrest either for felony, or for breach of the peace, or to prevent a breach of the peace, without processe or originall Writ; and it were hard the King should not have the power of a Constable: & the Statutes cited by the Commons make processe of the Law and Writ originall to be all one.

The answer of the Commons to this Objection was, That they do not intend originall Writs only by the Law of the Land, but all other legall processe, which comprehends the whole proceedings of Law upon Cause, other then the triall by Jurie, *Judicium parium*, unto which it is opposed. Thus much is imported *ex vi termini*, out of the word *processe*, and by the true acceptation thereof in the Statutes which have been urged by the Commons to maintain their Declaration, and most



especially in the Statute 25. E. 3. cap. 4. where it appeareth that a man ought to be brought into answer by the course of the Law ; having former mention made of processe made by originall Writ.

And in 28. E. 3. cap. 3. by the course of the Law, is rendered by due processe of the Law. and 36. E. 3. Rot. Parl. num. 20. the Petition of the Commons saith, That no man ought to be imprisoned by speciall Command without Indictment, or other due processe to be made by the Law. 37. E. 3. cap. 18. calleth the same thing Processe of the Law : 42. E. 3. cap. 3. stileth it by due processe and Writ originall ; where the conjunctive must be taken for the disjunctive : which change is ordinary in the exposition of the Statutes and Deeds, to avoid inconvenience, to make it stand with the rest and with reason. And it may be collected that by the Law of the Land in *Magna Charta*, by the Course of the Law in 25. E. 3. by due processe of the Law in 28. E. 3. other due processe to be made by the Law in 36. E. 3. processe of the Law 37. E. 3. and by due processe and originall Writ in 42. E. 3. are meant one and the same thing, the latter of these Statutes referring alwayes to the former, and that all of them import any due and regular proceeding of Law upon a Cause, other then the triall by Jury. And this doth appeare in *Coke* 10. 74. in the case of the *Marshalsey* ; and *Coke* 11. 99. *James Bagg's* case, where it is understood of giving Jurisdiction by Charter or prescription, which is the ground of a proceeding by course of Law : and in *Selden's* Notes on *Fortescue* fol. 29. where it is expounded for Law wager, which is likewise a triall at Law by the oath of the partie, differing from that by Jurie. And it doth truly comprehend these and all other regular proceedings in Law upon Cause, which gives authoritie to the Constable to arrest upon Cause.

And if this should not be the true exposition of these words *per legem terra*, the Kings Councell were desired to declare their meaning : which they never offered to do ; and yet certainly these words were not put into the Statute without some intention of consequence. Whereupon M<sup>r</sup> Serjeant *Ashley* offered an interpretation of them thus ;

Namely, that there were divers Lawes of this Realme, as the *Common* Law, the Law of the *Chauncerie*, the *Ecclesiasticall* Law, the Law of the *Admiraltie* or *Marine* Law, the Law of *Merchants*, the *Martiall* Law, and the Law of *State*, and that these words *per legem terra* do extend to all those Lawes.

The answer.

To this it was answered, that we read of no Law of *State*, and that none of these Lawes can be meant there save the Common Law, which is the principall and generall Law, and is alwayes understood by way of excellency, when mention is made of the Law of the Land generally : and that though each of the other Lawes, which are admitted into this Kingdome by Custome or Act of Parliament, may justly be called a Law of the Land ; yet none of them can have the preeminence to be stiled the Law of the Land. And no Statute, Law-book or other Authority,

thoritie, printed or unpriated, could be shewen to prove that the Law of the Land being generally mentioned, was ever intended of any other Law then the Common Law; and yet even by these other Lawes a man may not be committed without a cause expressed.

But it standeth with the rule of other legall expositions, that *per legem terra* must be meant the Common Law, which is the generall and universall Law by which men hold their inheritances. And therefore if a man speak of *Eſcuage* generally, it is understood (as *Littleton* observeth) of the incertain *Eſcuage*, which is a Knights-Service Tenure for the defence of the Realm by the body of the Tenant in time of warre, and not of the certain *Eſcuage*, which giveth only a contribution in money, and no personall service.

And if a Statute speakes of the Kings Courts of Record, it is meant only of the 4 at *Westm.* by way of excellency, *Coke* 6. 20. *Gregorie's* Case. So the *Canonists* by the excommunication simplie spoken, do intend the greater excommunication. and the *Emperour* in his *Institutions* saith, that the Civil Law being spoken generally, is meant of the Civil Law of *Rome*; though the Law of every City is a Civil Law: as when a man names the Poet, the *Grecians* understood *Homer*, the *Latinists* *Virgil*.

Secondly, admit that *per legem terra* extends to all the Lawes of the Realm, yet a man must not be committed by any of them, but by the due proceedings that are exercised by those Lawes, and upon a Cause delivered.

Again it was urged, that the King was not bound to expresse the cause of imprisonment, because there may be in it matter of State, not fit to be revealed for a time, lest the Confederates thereupon make meanes to escape the hands of Justice. And thereupon the Statutes cannot be intended to restrain all commitments unlesse a cause be expressed, for that it would be very inconvenient and dangerous to the State to publish the cause at the very first.

Answer.

Hereupon it was replied by the House of Commons, that all danger and inconvenience may be avoided by declaring a generall Cause, as for treason, suspicion of treason, misprision of treason, or felony, without specifying the particular, which can give no greater light to a Confederate then will be conjectured by his very apprehension upon the imprisonment, if nothing at all were expressed.

It was further alledged, that there was a kind of contradiction in the position of the *Commons*, when they say the partie committed without a cause shewed ought to be delivered or bailed: Bailing being a kind of imprisonment, Delivery a totall freeing.

To this it was answered, that it hath alwayes been the discretion of the Judges to give so much respect to a Commitment by the Command of the King, or the Privie Councell, (which are ever intended to be done on just & weightie Causes) that they will not presently set him



free, but baile him to answer what shall be objected against him on his *Majesties* behalf. But if any other inferiour Officer commit a man without a cause shewed, they do instantly deliver him, as having no cause to expect their pleasure. So the Delivery is applyed to an imprisonment by the command of some mean minister of Justice, Bailing when it is done by the Command of the King or his Councell.

It was said by Mr *Attorney*, That Bailing was a grace and favour of a Court of Justice, and that they may refuse to do it.

This was agreed to be true in divers cases, as where the case doth appeare to be for felony, or other crimes expressed; for that there is another way to discharge them in some convenient time, by their triall: & yet in some of these cases the constant practise hath been anciently & modernly to baile them. But where no cause of the imprisonment is returned but the Command of the King, there is no way to deliver such persons by triall or otherwise, but that of the *habeas Corpus*; and if they should be then remanded, they may be perpetually imprisoned without any remedy at all, and consequently a man that had committed no offence, be in worse case then a great Offender; for the latter should have an ordinarie triall to discharge him, the other should never be delivered.

It was further said that though the Statute of *Westm. 1. cap. 15.* as a Statute by way of provision did extend only to the Sheriff, yet the recitall of that Statute touching the 4 cases wherein a man was not replevisable at the Common Law, namely those that were committed for the death of a man, by the command of the King, or the Justices, or for the Forrest, did declare that the Justices could not baile such a one, and that Replevisable andailable were *Synonyma* and all one, and that *Stamford* a Judge of great authority doth expound it accordingly, and that neither the Statute, nor he sayes replevisable by the Sheriff, but generally without restraint, and that if the Chief Justice commits a man, he is not to be enlarged by another Court, as appeareth in the Register.

To this it was answered;

First, that the recitall and body of the Statute relates only to the Sheriff, as appeareth by the very words.

Secondly, that replevisable is not restrained to the Sheriffs, for that the words import no more that a man committed by the Chief Justice isailable by the Court of *Kings Bench*.

Thirdly, that *Stamford* meaneth all of the Sheriff, or at least he hath not sufficiently expressed that he intended the Justices.

Fourthly, It was denyed that Replevisable andailable were the same; for they differ in respect of the place where they are used, Baile being in the Kings Court of Record, Replevisable before the Sheriff: and they are of severall natures, Replevisable being a letting at large upon Sureties, Bailing being when one *Traditur in ballium*, and the Baile are his Gaolers, and may imprison him, and shall suffer bodie for bodie,

bodie, which is not true of replevyng by lures. And Baile differeth from Mainprize in this, that Mainprize is an undertaking in a summe certain, Bailing is to answer the condemnation in Civil causes, and in Criminal body for body.

The reasons and authorities used in the first Conference were then renewed, and no exception taken to any, save in 22. H. 6. it doth not appear that the Command of the King was by his mouth, which must be intended, or by his Councell, which is all one, as is observed by *Stamford*, for the words are these, That a man is not replevisable by the Sheriff, who is committed by the Writ or Commandment of the King.

21. E. 1. rot. 2. dorso was cited by the Kings Counsell. But it was answered, that it concerned the Sheriff of *Leicester* only, and not the power of the Judges. 33. H. 6. the Kings Attorney confesseth was nothing to the purpose: and yet that Book hath been usually cited by those that maintain the contrary to the Declaration of the House of Commons. And therefore such sudden opinion as hath been given thereupon is not to be regarded, the foundation failing.

And where it was said, that the *French* of 36. E. 3. Rot. Parliament. 9. which can receive no answer, did not warrant what was inferred thence, but that these words *Sans disturbance mettre ou arrest faire et le contre par special commandment ou en autre maniere*, must be understood, that the Statutes should be put in execution without putting disturbance, or making arrest to the contrarie by speciall command or in other manner: The Commons did utterly deny the interpretation given by the Kings Counsell, and to justify their own did appeal to all men that understood *French*, and upon the 7 Statutes did conclude, That their Declaration remained in undoubted truth, not controlled by any thing said to the contrary.



*The true Copies of the Records not printed which were  
used on either side of that part of the debate.*

**I**Nter Recorda domini Regis *Caroli* in Thesauro Recepto Scacarii sui sub custodia domini Thesaurarii et Camerarii ibidem remanentia, viz. placita coram ipso Domino Rege & Concilio suo ad Parliament. suum post Pascham apud *London*, in Manerio Archiepiscopi *Ebor.* Anno Regni Domini Regis *Edw.* viceffimo primo, inter alia sic continetur, ut sequitur.

*Rot. secundo in Dorso. Vic. Leic. sci.*

*Stephanus Rubaz Vic. Leic. & War.* coram ipso Domino Rege & ejus concilio arianatus & ad Levem positus de hoc quo cum *Jo. Boretourte, Edel Hache, & W. Hemelin.* nuper in ballium ipsius vicecom. per Dominum Regem fuissent assignati and Goalas Domini Regis deliberandum eidem vic. quendam *W. de Petling* per quendam Appellatorem ante adventum eorundam Justic. ibidem appellatam & captum vivente ipso appellatore usque diem deliberationis coram eis facte demisit per plevinam contra formam statuti &c. Et etiam quendam *Radulphum de Cokehall* qui de morte hominis indictatus fuit & per eundem vicecom. captus. Idem vicecomes per plevinam dimisit contra formam statuti & etiam eundem *Radulphum* sine terris coram eisdem Justitiariis ad deliberationem predictam produxit contra consuetudinem Regni & simile quendam *Will.* filium *Walteri le Persone* qui per preceptum Com. War. captus fuit dimisit per plevinam contra voluntatem & preceptum Domini Regis. Cum idem Dominus Rex sub Litteras suas sub privato sigillo suo eidem vic. præcepit quod nulli per præceptum prædicti Com. Warr. capt. aliquam gratiam faciat, &c. Et super hoc præfatus *Johannes Boretourt* qui presens est & qui fuit primus Justic. predicatorum premissa recordatur.

Et prædictus vicecomes dicit quo ad prædictum *Will. de Petlings* quod ipse nunquam à tempore captionis ipsius *Will.* per prædictum appellatorem demissus fuit per plevinam aliquam ante adventum prædictorum Justitiariorum, Imo dicit quod per dimidium anni ante adventum eorum Justic. captus fuit, & semper detentus in prisoa absque plevina aliqua quousque coram eisdem damnatus fuit & quo ad prædictum *Radulphum* bene cognoscit quod ipse dimisit eum per plevinam & hoc benefacere potuit ratione & autoritate officii sui eo quod captus fuit pro quodam simplici transgressione & non pro aliqua feloniam pro qua replegiari non potuit & quo ad tertium viz. *Will.* filium *Persone* bene cognoscit quod ipse captus fuit per præceptum prædicti Com. Warr. & quod dimisit eum per plevinam sed dicit quod hoc fecit, ad rogatum quorundam de hospitio & curia Domini Regis &c. qui eum inde specialiter rogaverunt per litteras suas & super hoc idem Vic. quæsitus per Dominum Regem quis eum rogavit & litteras suas ei direxit & ubi lite-

ra ille sunt dicit quod *Walterius de langton* eum per literas suas inde rogavit sed dicit quod breve ille sunt in partibus suis *Leic.* & super hoc idem Vic. profert quoddam breve Domini Regis de Privato Sigillo eidem vicecomiti directum quod testatur quod dominus Rex ipsi vicecomiti præcepit quod omnes illos transgressiones contra pacem & de quibus Com. Warr. ei scire faceret caperet & salvo custodierit absque aliqua gratia eis faciend. & quia prædictus Justitiar. expresse recordatur quod ipse & socii sui per bonu. & Legal. inquisitionem de militibus & aliis hominibus coram eis fact. invenerunt quod prædictus *Willielmus de Petlings* demissus fuit per plevinam per magnum tempus ante adventum eorundam & per vicecomite prædicto, & etiam quia prædictus vic. cognoscit quod prædictus *Radulphus* demissus fuit per plevinam per ipsum vic. & hoc dicit quod benefacere potuit, eo quod captus fuit pro levi Transgressione & per Record. ejusdem Justitiarum compertum est, quod captus fuit pro morte hominis quod est contrarium dicto prædict. vic. & similiter quod idem vic. cognovit quod recepit literam Domini Regis per quam, Rex ei præcepit quod nullam gratiam fecerit, illis quæ capti fuerunt per præceptum prædicti Comitatus & eidem vic. contra præceptum illud dimissit prædictum *Will.* filium *Walteri* per plevinam qui captus fuit per præceptum prædicti Comitatus prout idem vic. fatetur & sic tum ratione istius transgressione quam aliorum prædictorum incidit in poenam statuti Const. est quod prædictus vic. committitur prisonæ juxta formam statuti, &c.

*Ex Rotulo Parliament. de Anno Regis Edw. Tertii tricesimo sexto Num. 9.*

Primierent à la grand Chartre et la Chartre de Foreste et les autres estatuts faits en son temps et des ses Progenitours pour profit de lui et de la Commonalty bien et ferment garder et mis en due execution sans disturbance mettre ou arrest. faire len contre par special mandament on en auter manere. Nostre seigneur le Roy per assent de Prelatts Countes Barons et la Commonalty ad ordeine et establi et les dits Chartres et statutes soient tenurs et mis en execution selon la dit petition.

*Numero 20.*

Item come il soit convenus en la grand Chartre et autres estatuts & nul homine spoit pris ne imprison per special mandament sans enditement ou autre due processe affair per la loy et sonent faite ad este et uncore est et plusieurs gentes sont empescher pris et imprisones sans enditement on autre, proces fait per la loi sur eux sibien de chose faite hors de la forrest du Roy cum pour autre cause que pliese Seigneur le Roy dit nostre &c. Commander et deluier ceux et sont ausi pris per tiel especial mandament Contra le forme des Chartres avantdit dits.

*Resp.* It pleist au Roy et simul le seurs que qui viegne et fait le plaint te droit lui seura fait.

*Parliament. anno 42. E. 3. Num. 12.*

Item purce que plusours de vestre Commonalty anients et destinite per faux accusans queux font lour accusaments plus per lour vengances et singlers profits que purla profit du Roy ou de son people et la accusits



per eux ascuns on es pris et ascuns soit fait venire deuant le counsel le Roy per brief en autre mandament du Roy sur grief Peme en contra la loir. Pleise a nostre le Roy et son bon Concil : pro droit government de son people ordeigne que se desors ascuns accusore purpose asconet matre pur profit du Roy, et cille matire soit menda à ses Justices det un Bancks ou del autre ou de assises dent enquere et terminere solon la lei et si touche accuser ou parle dit soit sent a le rome les et nul homine soit mis a respondere son presentment de naut Justices en chose de Recordes en per due processe et brieve original solon lanciene Loyde la Terre et si rien de sore euanant en soit fait a le contre soit voide en lei et ten pur errour.

*Resp.* Purce que ceste article est Article de le grand Chartre le Roy voit que loy soit fait come la petition demande.

*Ex Rot. Clauss. de Anno Regni Regis E. 1. primo Num. 1. M. 1.*

*Thomas de Clere de Bletchwith captus & detentus in prisona Northampton pro transgressionibus forrestæ habet literas Rogero de Clifford Justic. forrest. citra Trent quod ponatur per ballium dat. apud Sanctum Martinum magnum London. vicesimo die Octobris.*

*M. 7.*

*Stephanus de Lyndley captus & detentus in prisona pro transgressionem per ipsum facta in homines Regis de Lyndley habet Literas Regis Galfrido de Nevill Justic. ultra Trent, quod ponatur per ballium.*

*M. 9.*

*Thomas Spademan captus & detentus in prisona Oxon. pro morte Will. Wynne unde rectatus est habet Literas Regis Vic. Oxon quod ponatur per ballium.*

*M. 9.*

*Willielmus de Deane, Mattheus Crust, Rogerus de Bedell, Willielmus Halfrench, Robertus Wyall, Alexander Hareing, Harry le Shorne, Nicolas de Sindilond, Turgesius de Hertfield, Robertus de Pole & Ricardus de Galeas, capti & detenti in prisona nostra Cant. pro morte Galfridi de Cottillen, unde appellati sunt, habent Literas Regis Vicecancellario quod ponantur per ballium dat. 23. die Martii.*

*Clauss. Anno 2. Edw. 1. Num. 12.*

*Rex Rogero de Clifford Justic. forrest. citra Trent, mandamus vobis quod si Robertus Umrin captus & detentus in prisona nostra de Aylsburie pro transgressionem forrestæ nostræ invenit vobis 12 probos & legales homines de balliva nostra qui manucapiant eum habere coram Justiciariis nostris ad placita forrest. cum in partes &c. ad stand. inde rect. tunc ipse Robertus si secundum Ass. forrest. fuerit Replegiabilis per dictos 12. interim tradatur in ballium sicut prædictum est & habeatis nomina illorum 12. hominum & hoc breve dat. 27. die Februarii.*

*Clauss. Num. 2. E. 1. M. 14.*

*Willielmus de Bryott, Galfridus de Wickerum, & Hugh de Stowe, detent.*

tent. in prifona regis de *Aylsbury* pro transgreffione venat. breve direct. *Rogero de Clifford* Justic. forrest quod si secundum ass. Forrest. fuerint repleg. usque advent. Justic. Regis ad placita Forrest. cum in partes illas venerunt dat. apud *Coddington*. 28. die Decembris.

Deponend.  
in ballium.

M. 15.

*Gilbertus Gourney de Kedington*, & *Hugo le Tailour de Kedington*, capti & detenti in prifona de Sancti *Edmundi* pro morte *Edmundi Butting*, unde rectati sunt, habuerint Literas Regis Vic. Suff. quod ponantur per ballium.

Clauss. anno 3. E. 1. M. 71.

*Galsfridus de Haireton*, capt. & detent. in prifona Regis *Ebor.* pro morte *Adel Clerke* unde rectatus est habet Literas Regis Vicecomiti *Ebor.* quod ponatur per ballium dat apud *Westmonasterium* viceffimo octavo die Junii.

Membr. 20.

*Robertus Belbarbe* captus & detentus in prifona Regis de *Newgate* pro morte *Thome Pollard*, unde rectatus est, habeat Literas Regis Vic. *Midd.* quod ponatur per ballium dat 28. die Februarii.

Clauss. Num. quarto. E. 1. M. 5.

Mandat est *Radolpho de Sandwich* quod si *Willielmus de Passare* & *Johannes* filius ejus, *Walterius Home*, *Walterius Cornum*, *Henericus Patch*, & *Willielmus Cardegan* capt. & detent. in prifona Regis de Sancto *Bryanello* pro transgreffione forrest. unde rectat. sunt, induunt sibi 12 probos & legales homines de Balliva sua (viz.) quilibet eorum duodecim qui eos manucapierent breve coram Justic. Regis ad placita forr: cum in partes illas venerunt ad stand. inde rect. tunc ipsos *Will. Joh. Henr.* & *Will.* prædict. duodecimo secundum ass. forr. fuerint replegiand. traditur in Ballium ut prædict. est si habeant nomina illorum duodecem hominum & hoc breve Teste rege apud *Bellam* locum Regis viceffimo nono die Augusti.

Clauss. anno 4. E. 1. M. 16.

*Henricus* filius *Rogeri de Ken de Cotesbrook*, capt & detent. in prifona nostra *Northampton* pro morte *Simonis le Charreter* unde appellatus est habet Literas Regis Vic. *Northampton* quod ponatur per ballium.

Clauss. anno quinto E. 1. M. 1.

Mandat est *Galsfrido de Nevill* Justic. Forrest. ultra *Trent* quod si *Walter de Le Greve* capt & detent. in prifona de *Nott.* pro transgreffione forrest. invenerit sibi 12 probos & legales homines &c. qui eum manucapiunt &c. ad stand. inde rect. secundum Ass. Forr. Regis tunc ipsum *Walterum* prædict. 12 traditur in ballium sicut prædict. est dat. 16. die Novembris.

Mem. 2.

*Thomas de Upwell* & *Jul.* uxor ejus capti & detenti in prifona de *Vynbatesham* pro morte *Stephani Sontbell* unde rectati sunt, habent



Litteras Vicecom. *Norff.* quod ponatur per ballium, dat apud *Roche-*  
*lan* vicesimo octavo die *Septembris*.

*Clauss. anno 6. E. 1. Num. 2.*

*Bitheries Pesse* captus & detentus in prifona Regis de *Norwich* pro morte *Julian* quondam ux. suæ unde reſtatus eſt habet Litteras Vicecomiti *Norfolcia*, quod ponatur per ballium Teſte Rege apud *Westmonaſterium* duodecimo die *Novembris*.

*M. 4.*

Mandat eſt Vicecomiti *Notting.* ſcilicet quod *Thomas de Cadurie* reſtat. de tranſgreſſione forr. quam feciſſe dicebatur in forreſta de *Sherwood*, invenerit ſibi ſex probos & legales homines de balliva ſua qui eum manucapiunt habere coram Rege ad mandat. Reg. ad ſtand. reſt. coram Rege cum Rex inde cum eum loqui voluerit tunc prædict. *Thomas* ſex hominibus traditur in ballium juxta manucapt. ſupra dict. dat decimo quinto die *Decembris*.

*M. 4.*

*Thomas Burell* captus & detentus in prifona Regis *Exon* pro morte *Galfredi Geffard* unde reſtatus eſt, habet Litteras vicecomiti *Devon.* quod ponatur per ballium.

*Clauss. anno primo Edw. 2. Membr. 1.*

*Johannes Brun, de Rollenwrith* captus & detentus in prifona Regis *Oxon.* pro morte *Johannis de Sutton*, unde reſtatus eſt, habet Litteras Regis Vicecomiti *Oxon.* quod ponatur per ballium uſque ad primam Aſſ. ſi ea occasione &c. Teſte Rege apud *Briſtoll*, 28 die *Junii*.

*M. 2.*

*Will. Spore* Capellanus captus & detentus in prifona Regis *Exon.* pro morte *Johannis Spore*, unde indiſtatus eſt, habet Litteras Regis Vicecomiti *Devon.* quod ponatur per ballium uſque ad primam Aſſiſam, ſi ea occasione, &c. Teſte Rege apud *Wyndſ.* 28 die *Maii*.

*Numero 10.*

*Gilbertus Fairchild*, captus & detentus in Gaola Regis *Dorcheſtr.* pro morte *Henric. de Langten* molendinarii unde indiſtatus eſt habet Litteras quod ponatur per ballium uſque ad primam Aſſiſam, T. Rege apud *Westm.* 28 die *Februarii*.

*Clauss. anno 2. E. 2. M. 1.*

*Willielmus Sandre de Cobeham*, captus & detentus in prifona Regis *Cant.* pro morte *Johannis de ſprincke* *Johannis Ermond de Dunberke* unde reſtatus eſt, habet Litteras Vicecancellario quod ponatur per ballium uſque ad primam Aſſiſam ſi ea occasione &c. Teſte Rege apud *Ceſtr.* vicesſimo octavo die *Junii*.

*Radulphus Coſyn*, captus & detentus in Gaola Regis *Lanc.* pro morte *Will. filius Simonis Le Porter*, unde reſtatus eſt habet Litteras Regis Vic. *Lanc.* quod ponatur per ballium uſque ad primum Aſſiſam ſi ea occasione, &c. Teſte Rege apud *Shene* tertio die *Junii*.

*M. 7.*

*Johannes de Githerd* captus & detentus in prifona Regis *Eborac.* pro morte

morte *Matth. Sampson de Eborac.* unde rectatus est, habet Literas Regis vicecomiti *Ebor.* quod traditur per ballium usque ad primam Assisam dat. apud *Langele* quinto die *Aprilis*.

*Clauss. anno tertio Edw. 2. M. 3.*

*Adam le Pepper* captus & detentus in Gaola Regis *Ebor.* pro morte *Henrici Le Sumer de Estricke*, unde rectatus est, habet Lite- Deponend.  
in ballium. ras Regis Vicecomiti *Ebor.* quod ponatur per ballium us- que ad primam Assisam Teste Rege apud *Westm.* septimo die *Februarii*.

N. 14.

*Margaret* uxor *Willielmi Calbot* capta & detenta in Gaola Regis *Norwici* pro morte *Agnet* filie *Willielmi Calbot* & *Maltida* sororis ejusdem *Agnetis*, unde rectata est, habet Literas Regis Vicecomiti *Norfolcia*, quod ponatur per ballium T. Rege apud *Shene* 22. die *Januarii*.

N. 16.

*Johannes Frere* captus & detentus in Goala Regis *Exon.* pro morte *Ade de Egolegh*, unde rectatus est, habet Literas Regis Vicecomiti *Devon.* quod ponatur per ballium Teste Rege apud *Westm.* septimo die *Decembris*.

*Clauss. anno 4. E. 2. M. 7.*

*Robertus Sheren* captus & detentus in Gaola Regis de *Colchester* pro morte *Roberti Le Maigne* unde rectatus est, habet Literas Regis Vicecomiti *Essex.* quod ponatur per ballium usque ad primam Assisam dat 22 die *Maii*.

M. 8.

*Willielmus* filius *Roberti Le Fishere de Shirbourne*, captus & detentus in Goala Regis *Ebor.* pro morte *Roberti Le Monnez de Norton*, unde rectatus est, habet Literas Regis Vicecomiti *Ebor.* quod ponatur per ballium usque ad primam Assisam dat. 25 die *Aprilis*.

*Clauss. anno 4. Edw. 2. N. 22.*

*Thomas Ellis de Stamford* captus & detentus in prifona Regis *Lincoln*, pro morte *Mich. filii Willielmi de Foddering*, unde rectatus est habet Literas Regis Vicecomiti *Lincoln*, quod ponatur per ballium usque ad primam Assisam Teste rege apud novum *Monasterium* octavo die *Septembris*.



*The Argument which by command of the House of Commons, was made at their first conference with the Lords, touching the Liberty of the person of every Free-man, out of Presidents of Record and Resolutions of Judges in former times, by Mr Selden.*

My Lords,

**Y**Our Lordships have heard from the Gentleman that last spake a great part of the grounds upon which the House of Commons, after mature deliberation, proceeded to that cleer resolution touching the right of Liberty of their persons. The many Acts of Parliament ( which are the written Lawes of the Land, and are expressly in the point ) have been read and opened, and such objections as have been by some made to them, and some other objections also made out of other Acts of Parliament, have been cleerly answered.

It may seem now perhaps, my Lords, that little remaines needfull to be further added for the enforcement and maintenance of so fundamentall and established a right and liberty belonging to every Free-man of the Kingdome.

But in the examination of Questions of Law or Right, besides the Lawes or Acts of Parliament, that ought chiefly to regulate and direct every mans judgement, whatsoever hath been put in practise to the contrarie ; there are commonly also used former Judgements or Presidents : and they indeed have been so used sometimes, that the weight of Reason, of Law, and Acts of Parliament hath been laid by, and resolutions have been made, and that in this very point, only upon the interpretation and apprehension of Presidents.

But Presidents, my Lords, are good *media* or proofs of illustration or confirmation when they agree with the expresse Law ; but they can never be proof enough to overthrow any one Law, much lesse severall Acts of Parliament, as the number of them is for this point.

The House of Commons therefore taking into consideration, that in this Question ( being of so high a nature that never any exceeded it in any Court of Justice whatsoever ) all the severall wayes of just examination of the truth should be used, have also most carefully informed themselves of all former Judgements or Presidents concerning this great point either way, and have been no lesse carefull of the due preservation of his *Majesties* just Prerogative, then of their own Rights.

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The Presidents here are of two kinds : either meerly matter of Record, or else the former resolutions of Judges after solemn debate in the point.

This part that concernes the Presidents the House of Commons have commanded me to present to your Lordships, which I shall as briefly as I may ; so I shall do it also faithfully and perspicuously.

To that end, my Lords, before I come to the particulars of any of these Presidents, I shall first remember to your Lordships that which serves as a generall key for the opening and true apprehension of all them of Record, without which key no man (unlesse he be versed in the Entries and Court of the *King's Bench*) can possibly understand them.

In all cases, my Lords, where any right or Liberty belongs to the Subject by any positive Law, written or unwritten, if there were not also a remedy by Law for the enjoying or regaining of this right or Libertie when it is violated or taken from him, the positive Law were in vain; and to no purpose were it for any man to have right in any land or other Inheritance, if there were not a known remedy, that is an Action or Writ, by which in some court of ordinary Justice he might recover it. And in this case of right of Liberty of the Person, if there were not a remedy in the Law for regaining it when it is restrained, it were to no purpose to speak of Lawes that ordain it should not be restrained.

Therefore in this case also I shall first observe the remedy that every Free-man is to use for the regaining of his Liberty when he is against Law imprisoned, that so upon the legall course and form to be held in using that remedy, the Presidents or Judgements upon it ( for all Presidents of Record rise out of this Remedy ) may be easily understood.

There are in the the Law divers remedies for enlargement of a Free-man imprisoned, as the Writs of *odio & atia*, and of *homine replegiando*, besides the common and most known Writ of *habeas Corpus*, or *Corpus cum causa*, as it is called also.

The first two are Writs to be directed to the Sheriff of the Countie, and lye only in some particular cases, with which it would be untimely for me to trouble your Lordships, because they concern not that which is committed to my charge.

But that Writ of *habeas Corpus* or *Corpus cum causa*, is the highest remedy in Law for him that is imprisoned by the speciall command of the King, or of the Lords of the Councell, without shewing cause of the commitment. Neither is there any such thing in the Lawes of this Land, as a Petition of Right to be used in such cases for the Liberty of the person, nor is there any other legall Course to be taken for enlargement in such cases, howsoever the contrary hath upon no ground or colour of Law been pretended.

Now, my Lords, if any man be so imprisoned by any such com-

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mand or otherwise, in any prison whatsoever through *England*, and desire either by himself, or any other in his behalf this Writ of *habeas Corpus* ( for the purpose ) in the Court of *King's Bench*; the Writ is to be granted to him, and ought not to be denied him, no otherwise then any ordinary originall Writ in the *Chancery* or other common proceſſe of Law may be denied: Which, amongst other things, the House of Commons hath resolved also upon mature deliberation, and I was commanded to let your Lordships know so much.

This Writ is to be directed to the Keeper of the Prison in whose custody the Prisoner remaines, commanding him that at a certain day he bring in the body of the Prisoner, *ad subiiciendum & recipiendum juxta quod Curia consideraverit, & una cum causa captionis & detentionis*; and oftentimes *una cum causa detentionis* only, *captionis* being omitted.

The Keeper of the Prison thereupon returnes by what Warrant he detaines the Prisoner, and with his Return filed to his Writ brings the Prisoner to the Barre at the time appointed.

When the Return is thus made, the Court judgeth of the sufficiency or insufficiency of it only out of the body of it, without having respect to any other thing whatsoever: that is, they are to suppose the Return to be true whatsoever it be. For if it be false, the party may have his remedy by action on the case against the Gaoler that brings him.

Now, my Lords, when this Prisoner comes thus to the Barre, if he desires to be bailed, and that the Court upon view of the Return think him in Law to be bailed; then he is alwayes first taken from the Keeper of the Prison that brings him, and committed to the Marshall of the *Kings Bench*, and afterwards bailed; and the Entrie perpetually is *Committitur Marr. & postea traditur in ballium*. For the Court never bailes any man untill he becomes their own Prisoner, and be in *custodia Mareſcalli* of that Court.

But if upon return of the *habeas Corpus* it appears to the Court that the Prisoner ought not to be bailed, nor discharged from the Prison whence he is brought, then he is remanded or sent back again, there to remain untill by Course of Law he may be delivered. And the Entrie in such case is *Remittitur quousque secundum legem deliberatus fuerit*, or *Remittitur quousque &c.* which is all one, and is the highest award or Judgement that ever was or can be given upon a *habeas Corpus*.

But if the Judges doubt only whether in Law they ought to take him from the prison whence he came, or give daie to the Sheriff to amend his Return, ( as often they do ) then they remand him only during the time of their debate, or untill the Sheriff hath amended his Return; and the Entrie upon it is *Remittitur* only, or *Remittitur prisoſa predicta*. without any more. And so *remittitur* generally is of farre lesse moment in the award upon the *habeas Corpus*, then *remittitur quousque*: howsoever vulgar opinions raised out of the fame of the late Judgement be to the contrary.

All these things are of most known and constant use in the Court  
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of *Kings Bench*, as it cannot be doubted but your Lordships will easily know also from the grave and learned, my Lords the Judges.

These two causes, the one of the Entrie of *Committitur Marefcallo & postea traditur in ballium*, and the other *Remittitur quousque*, and *Remittitur* generally, or *Remittitur prifona predict.* together with the nature of the *habeas Corpus*, being thus stated, it will be easier for me to open, and your Lordships to observe whatsoever shall occurre to this purpose in the Presidents of Record; to which I shall come in particular.

But before I come to the Presidents, I am to let your Lordships know the resolution of the House of Commons touching the enlargement of any man committed by the command of the King, or of the Privie Councell, or of any other, without cause shewed of such commitment. It is thus:

That if a Free-man be committed, or detained in prison, or otherwise restrained by the Command of the King, the Privie Councell, or any other, and no cause of such commitment, detainer, or restraint be exprest, for which by Law he ought to be committed, detained, or restrained, and the same be returned upon a *habeas Corpus* granted for the partie, that then he ought to be delivered or bailed.

This resolution as it is grounded upon those Acts of Parliament already shewed, and the reason of the Law of the Land, which is committed to the charge of another, and anone to be opened unto you; is strengthened also by many Presidents of Record,

But the Presidents of Record that concerne this point are of two kinds: for the House of Commons hath informed it self of such as concern it either way.

The first, such as shew expressly that persons committed by the Command of the King, or of the Privie Councell, without any cause shewed, have been enlarged upon Baile when they prayed it. Whence it appeares cleerly that by Law they wereailable, and so by *habeas Corpus* to be set at liberty. For although they ought not to have been committed without cause shewen of their commitment; yet it is true that the reverend Judges of this Land in former Ages, did give such a respect to such commitment by Command of the King or of the Lords of the Councell, (as also to the commitments sometimes of inferiour persons) that upon the *habeas Corpus* they rarely used absolutely to discharge the prisoners instantly, but to enlarge them only upon Baile, which sufficiently secures and preserves the Liberty of the Subject according to the Lawes that your Lordships have already heard. Nor in any of these cases is there any difference made between any such commitments by the King, and commitments by the Lords of the Councell that are incorporated with him.

The second kind of Presidents of Record are such as have been pretended to prove the Law to be contrarie, and that persons so committed ought not to be set at liberty upon Baile, and are in the nature of Objections out of Record.



I shall deliver them summarily to your Lordships with all faith, as also the true Copies of them : Out of which it shall appear cleerly to your Lordships, that of those of the first kind there are no lesse then twelve most full and directly in the point to prove that persons so committed are to be delivered upon baile; and among those of the other kind there is not so much as one that proves at all any thing to the contrary.

I shall first, my Lords, go through them of the first kind, and so observe them to your Lordships, that such scruples as have been made upon them by some that have excepted against them, shall be cleared also according as I shall open them severally.

The first of this first kind is of *Edw. 3.* time. It is in *Pasche 18. E. 3. Rot. 33. Rex.* The case was thus. King *E. 3.* had committed by Writ, & that under his Great Seal (as most of the Kings Commands in that time were) one *John de Bidleston* a Clergie-man to the prison of the *Tower*, without any cause shewed of the commitment. The Lieutenant of the *Tower* is commanded to bring him into the *Kings Bench*, where he is committed to the Marshall. But the Court asked of the Lieutenant if there were any cause to keep this *Bidleston* in prison, besides that commitment of the King. He answered, No. Whereupon (as the *Roll* saith) *Quia videtur Curia breve predictum* (that is the Kings Command) *sufficientem non esse causam predictum Johannem de Bidleston in prisiona Marr. Regis hic detinend. idem Johannes dimittitur per manucaptionem Will. de Wakefield* and some others. Where the Judgement of the Court is fully declared in the very point.

The second of this first kind of Presidents of Record is in the time of *H. the 8.* One *John Parker* was committed to the Sheriffs of *London pro securitate pacis*, at the Suit of one *Brinton*, *ac pro suspitione fellonie* committed by him at *Cowall in Gloucestershire*, *ac per mandatum Dni. Regis*: he is committed to the Marshall of the *Kings Bench*, & *postea isto eodem Termino traditur in Ballium*. There were other causes of the commitment, but plainly one was a Command of the King signified to the Sheriff of *London*, of which they took notice.

But some have interpreted this as if the commitment here had been for suspicion of felony by command of the King; in which case it is agreed of all hands that the Prisoner isailable.

But no man can think so of this President, that observes the Contents and understands the Grammar of it, wherein most plainly, *ac per mandatum Regis* hath no reference to any other cause whatsoever, but is a single cause enumerated in the Return by it self, as the Record cleerly shewes. It is in the *22. H. 8. Rot. 37.*

The third is of the same time. It is *35. H. 8. Rot. 33. John Bincks* case. He was committed by the Lords of the Councell *pro suspitione fellonie, ac pro aliis causis illos moventibus. Qui committitur Marescallo, &c. et immediate ex gratia curia special. traditur in ballium.*

They commit him for suspicion of felony, and other causes them there-

thereunto moving, wherein there might be matter of State, or whatsoever else can be supposed, and plainly the cause of the commitment is not expressed; yet the Court bailed him without having regard to those other unknown causes that moved the Lords of the Councell.

But it is indeed somewhat different from either of those other two that precede, and from the other nine that follow; For it is agreed, That if a cause be expressed in the return, insomuch as the Court can know why he is committed, that then he may be bailed; but not if they know not the cause. Now when a man is committed for a cause expressed, & *pro aliis causis Dominos de Concilio moventibus*, certainly the Court can no more know in such a case what the cause is, then in any other.

The fourth of these is in the time of Queen Mary. It is *Pasche 2. and 3. Phil. and Mar. Rot. 58. Overtons case*. Richard Overton was returned, upon a *habeas Corpus* directed to the Sheriffs of London, to have been committed to them and detained *per mandatum prenobiliū virorum honorabilis Concilli Dominorum Regis & Regine. Qui committitur Marescallo &c. immediate traditur in ballium*.

In answer to this President, or by way of objection against the force of it, hath been said that this Overton stood at that time indicted of Treason. It is true, he was so indeed, but that appears in another Roll, that hath no reference to the Return, as the Return hath no reference to that Roll.

Yet they that object this against the force of this President say, That because he was indicted of Treason, therefore, though he was committed by the command of the Lords of the Councell without cause shewed, yet he wasailable for the Treason, and upon that was here bailed. Then which Objection nothing can be or is more contrarie to Law or common Reason.

It is most contrarie to Law, for that cleerly every Return is to be adjudged by the Court out of the body of the Writ it self, & not by any other collaterall or forrain Record whatsoever. Therefore the matter of Indictment here cannot in Law be cause of the bailing of the Prisoner.

And it is so adverse to all common Reason, that if the objection be admitted, it must of necessity follow that whosoever shall be committed by the King or the Privie Councell, without cause shewed, and be not indicted of Treason or some other offence, may not be enlarged by reason of the supposition of matter of State. But that whosoever is so committed, and withall stands so indicted, though in another Record, may be enlarged, whatsoever the matter of State be for which he was committed. The absurdity of which assertion needs not a word for further confutation: as if any of the Gent. in the last Judgement ought to have been the sooner delivered if he had been also indicted of Treason. Certainly if so, Traitors and Fellons had the highest priviledges of personall Liberty, and that above all other Subjects of the Kingdome.



The first of this first kind is of Queen *Marie's* time also. It is *Pasche 4. & 5. P. & M. Rot. 45.* the Case of *Edward Newport*. He was brought into the *Kings Bench* by *habeas Corpus* out of the *Tower of London cum causa*, viz. *Quod commissus fuit per mandatum Conciliorum Domina Regina. Qui committitur Marr. &c. et immediate traditur in ballium.*

To this the like kind of answer hath been made as in that other Case of *Overton* next before cited. They say that in another Roll of another Terme of the same year, it appears he was in question for suspicion of *Coyning*. And it is true, he was so: But the Return and this Commitment mentioned in it have no reference to any such offence, nor hath the Bailment of him relation to any thing, but to the absolute Commitment by the Privie Councill. So that the answer to the like objection made against *Overton's* Case satisfies this also.

The sixth of these is of *Q. Elizabeth's* dayes. It is *Mich. 9. Eliz. Rot. 35.* the Case of *Thomas Lawrence*. This *Lawrence* came in by *habeas Corpus*, returned by the Sheriffs of *London* to be detained in prison *per mandatum Concilii Domina Regina. Qui committitur Marefcallo, &c. & super hoc traditur in ballium.*

An Objection hath been invented against this also. It hath been said that this man was pardoned: and indeed it appeares so in the margin of the Roll, where the word *pardonatur* is entred. But cleerly his enlargement by Baile was upon the Bodie of the Return only, unto which that Note of *Pardon* in the Margin of the Roll hath no relation at all. And can any man think that a man pardoned ( for what offence soever it be ) might not as well be committed for some *Arcanum* or matter of State, as one that is pardoned?

The seventh of these is in the same yeare, and of *Easter Terme* following. It is *Pasche 9. Eliz. Rot. 68.* *Robert Constable's* Case. He was brought by *habeas Corpus* out of the *Tower*, and in the Return it appeared he was committed *per mandatum privati Concilii dict. Domina Regina. Qui committitur Marr. & postea isto eodem Termino traditur in ballium.*

The like Objection hath been made to this, as to that before of *Lawrence*: but the self same Answer cleerly satisfies for both of them.

The eighth is of the same Queens time, in *Pasche 20. Eliz. Rot. 72.* *John Browning's* Case. This *Browning* came by *habeas Corpus* out of the *Tower* whether he had been committed, & was returned to have been committed *per privatum Concilium Domina Regina. Qui committitur Marefc. Et postea isto eodem Termino traditur in ballium.*

To this it hath been said, That it was done at the chief Justice *Wraye's* Chamber, and not in Court: and thus the authoritie of the President hath been lessened and sleighted. If it had been at his Chamber, it would have proved at least thus much, That *S<sup>r</sup> Christopher Wraye* then chief Justice of the *King's Bench*, being a grave, learned and upright Judge, knowing the Law to be so, did baile this *Browning*, and so enlarge

large him. And even so farre were the President of value enough. But it is plain that though the *habeas Corpus* were returnable indeed (as it appeares in the Record it self) at his Chamber in *Serjeant's Inne*, yet he only committed him to the *Kings Bench* presently, and referred the consideration of enlarging him to the Court, who afterwards did it. For the Record saith, *Et postea isto eodem Termino traditur in ballium*: which cannot be intended of an enlargement at the chief Justice his Chamber.

The ninth of this first kind is in *Hill. 40. Eliz. Rot. 62. Edward Harecourts* Case. He was imprisoned in the *Gate-house*, and that *per Dominos de privato Concilio Domina Regina pro certis causis eos morventibus et ei ignotis*, and upon his *habeas Corpus* was returned to be therefore only detained. *Qui committitur Marr. &c. Et postea isto eodem Termino traditur in ballium.*

To this never any colour of answer hath been yet offered.

The tenth is *Catesbies* Case in the *Vacation* after *Hillary Terme* 43. *E. Rot. 37. Robert Catesby* was committed to the *Fleet per warrant. diversorum prenobilium virorum de privato Concilio Domina Regina*. He was brought before Justice *Fennor*, one of the Judges of the *Kings Bench*, by *habeas Corpus* at *Winchester House* in *Southwark*, & commissus fuit *Marr. per prefat. Edw. Fennor, & statim traditur in ballium.*

The eleventh is *Richard Beckwith's* Case, which was in *Hillary* 12. of *King James, R. 153*. He was returned upon his *habeas Corpus* to have been committed to the *Gate-house* by divers Lords of the *Privy Councell*, *Qui committitur Marr. & postea isto Termino traditur in ballium.*

To this it hath been said by some, that *Beckwith* was bailed upon a Letter written by the Lords of the Councell to that purpose to the Judges. But it appeares not that there was ever any letter written to them to that purpose; which though it had been, would have proved nothing against the authority of the Record. For it was never before heard of that Judges were to be directed in point of Law by letters from the Lords of the Councell; although it cannot be doubted but that by such letters sometimes they have been moved to baile men that would not, or did not ask their enlargement without such letters; as in some examples that I shall shew your Lordships among the Presidents of the second kind.

The twelfth and last of these is that of *S<sup>r</sup> Thomas Mounson's*. It is *Mich. 14. Jacobi Rot. 147*. He was committed to the *Tower per warrantum à diversis Dominis de privato Concilio Domini Regis Locum-tenentis directum*, and was returned by the Lieutenant to be therefore detained in prison. *Qui committitur Marr. & super hoc traditur in ballium.*

To this it hath been answered, That every body knew by common fame that this Gentleman was committed for suspicion of the death of *S<sup>r</sup> Thomas Overbury*, and that he was thereforeailable. A most strange interpretation, as if the Body of the Return and the Warrant of the *Privie Councell* should be understood and adjudged out of fame only.



only. Was there not as much a fame why the Gentlemen that were remanded in the late Judgement were committed? and might not the self-same reason have served to enlarge them their offence (if any were) being I think much lesse then that for which this Gentleman was suspected?

And thus I have faithfully opened the number of twelve Presidents most expresse in the very point in question, and cleared the Objections that have been made against them.

And of such Presidents of Record as are of the first kind, or prove plainly the practise of former Ages, and Judgements of the Court of the *Kings Bench* in the very point in behalf of the Subjects, my Lords, hitherto.

I come next to those of the second kind, or such as have been pretended to prove that persons so committed are not to be enlarged by the Judges upon the *habeas Corpus*, but ought to remain in Prison still at the pleasure of the King or of the Privie Councell.

These are of two natures. The first are those wherein some assent of the King or the Privie Councell appears upon the enlargement of a Prisoner so committed; as if that because their assent appears, therefore the enlargement could not have been without such assent.

The second of this kind are those which have been used as expresse Testimonies of the Judges denying Baile. And in such cases I shall open this also to your Lordships, which being done, it will most cleerly appear that there is nothing at all in any of these that make any thing against the Resolution of the House of Commons touching this point. Nay, they are so farre from making any thing against it, that some of them adde good weight also to the proof of that Resolution.

For those of the first nature of this second kind of Presidents, they begin in the time of *H. 7.* *Thomas Brugge* and divers others were imprisoned in the *Kings Bench ad mandatum Domini Regis*. They never sought remedy by *habeas Corpus* or otherwise, for ought appears: but the Roll sayes, *Dominus Rex relaxavit mandatum*, and so they were bailed. But can any man think that this is an Argument either in Law or common Reason, that therefore they could not have been bailed without such assent?

It is common in the Cases of common persons, that one being in Prison for surety of the peace, or the like, at the Suit of another, is bailed upon the release of the party plaintiff. Can it follow that therefore he could not have been bailed without such a release? Nothing is more plain then the contrary. It were the same thing to say that if it appear that a plaintiffe be *non-suit*, therefore unlesse he had been *non-suit* he could not have been barred in the Suit. The Case last cited is *M. 7. H. 7. Rot. 6.*

The very like is in the same year, *Hill. 7. H. 7. Rot. 13.* the Case of *William Bartholmew, Williams Case*, and divers others. And the self-same

same answer that is given to the other cleeres this. So in the same year *Pasche 7. H. 7. Rot. 18. John Beaumont's Case* is the same in substance with those other two; and the self same answer also satisfies, that cleeres them.

The next is *Mich. 12. H. 7. Rot. 18. Thomas Yewe's Case*. He was committed *ad securitatem pacis*, for surety of the Peace, at the suit of one *Freeman*, and besides *ad mandatum Domini Regis*. And first *Freeman relaxavit securitatem pacis*, and then *S<sup>r</sup> James Hubbard* the then Kings Attorney generall *relaxavit Domini Regis mandatum*: and hereupon he is bailed. The release of the Kings Attorney no more proves that he could not have been enlarged without such release or assent, then that he could not have been bailed without the release of surety of the Peace by *Freeman*.

The very like is in *Hill. 9. H. 7. Rot. 14. the Case of Humphry Batch*: which proves no more here then the rest of this kind already cited.

Then for this part also *Broome's Case* of Queen *Elizabeth's* time hath been cited. The Case is thus, *Ter. 39. Eliz. Rot. 118. Lawrence Broom* was committed to the *Gate-house per mandatum Dominorum Concilii Domina Regina*, and being returned so upon the *habeas Corpus*, is first committed to the *Marshalsey*, ( as the course is ) and then bailed by the Court. Which indeed is an expresse President that perhaps might well have been added to the first twelve, which so plainly shews the practise of enlarging prisoners in this case by Judgement of the Court upon the *habeas Corpus*. But it is true that in the Scrolls of that yeare where the Bailes are entred, ( but not the Record of the *habeas Corpus* ) there is a note that this *Broom* was bailed *per mandatum privati Concilii super habeas Corpus*. But plainly this is no kind of Argument, that therefore in Law he ought not to have been otherwise bailed.

The self same is to be said of another of this kind, in *Mich. 40. Eliz. Rot. 37. Wenden's Case*. *Thomas Wenden* was committed to the *Gate-house* by the Queen and Lords of the Councell, *pro certis causis* generally: he is brought by *habeas Corpus* into the *Kings Bench*, and bailed by the Court.

But it is said that in the Scrolls of that yeare it appeares that this enlargement was *per consensum Dominorum privati Concilii*. And it is true that the Queene's Majesties Attorney did tell the Court that the Lords of the Councell did assent to it. Followes it therefore that this might not have been by Law done if the parties themselves had desired it?

So in *Trinit. primo Jacobi Rot. 30. S<sup>r</sup> John Brocket* being committed to the *Gate-house*, is by *habeas Corpus* returned to stand committed *per mandatum privati Concilii*. And he is enlarged *virtute warranti à Concilio predicto*. But the same answer that satisfies for the rest before cited, serves for this also.

The last of these is *Reyner's Case* in *Mich. 12. Jacob. Rot. 119*. He was committed to the *Gate-house* by the Lords of the Councell: being



brought into the *Kings Bench* by *habeas Corpus* is enlarged upon Baile. But this they say was upon a letter written by the Lords of the Councell to the Judges. It is true that such a letter was written; but the answer to the former Presidents of this nature are sufficient to cleer this also.

And in all these observe, First, That it appeares not the party ever desired to be enlarged by the Court, or was denyed it. Secondly, Letters either of the Councell or from the King cannot alter the Law in any case.

So that hitherto nothing that hath been brought for the contrarie part hath any force or colour of Reason in it.

We come now, my Lords, to those Presidents of the other nature cited against this Liberty of the Subject, that is, such as have been used to justify that persons so committed may not be enlarged by the Court.

They are in number eight; but there is not one of them all proves any such thing, as your Lordships will plainly see upon the opening of them. The first foure of them are exactly in the same words, saving that the names of the Persons and the Prisons differ. I shall therefore cite them all one after another, and then cleer them together.

The first is *Richard Everard's Case*, *Hill. 7. H. 7. Rot. 18.* He and others were committed to the *Marshalsey* of the Household *per mandatum Domini Regis*, and so returned upon an *habeas Corpus* in the *Kings Bench*. whereupon the Entrie is only *Qui committitur Marescallo, &c.*

The second is *Hill. 8. H. 7. Rot. 12. Richard Cherrye's Case*. He was committed to the Major of *Windsor* *per mandatum Domini Regis*, and so returned upon an *habeas Corpus*: and the Entrie is only *Qui committitur Maresc. &c.*

The third is *Hill. 9. H. 7. Rot. 14. Christopher Burton's Case*; who was committed to the *Marshalsey* of the Household *per mandatum Domini Regis*, and so returned upon his *habeas Corpus*: and the Entrie is likewise *Qui committitur Marescallo, &c.*

The fourth is *George Orswick's Case*, *Pasche 19. H. 7. Rot. 23.* He was committed to the Sheriffs of *London* *per mandatum Domini Regis*, and returned so upon the *habeas Corpus*, *Qui committitur Maresc.*

These have been used principally as expresse Presidents to prove that a Prisoner so committed cannot be enlarged. And perhaps at the first sight by men that know not or observe not the course and Entries of the Court of *Kings Bench*, they may be apprehended to prove as much: But in truth they rather prove the contrarie; at least there is no such colour in them of any such matter as they have been used for.

To which purpose I beseech your Lordships to call to your memories that which I first observed to you, touching the course of that Court where a Prisoner is brought in by *habeas Corpus*. He is (if he be not to be remanded) first committed to the *Marshall* of that Court, and then bailed as his Case requires, that is so certain as it can never be otherwise. Now these men being thus committed by the expresse Command of the King, are first you see taken from the Prisons where  
first

first they were committed. Wherein you may observe by the way, my Lords, that if a generall supposition of matter of State were of force, in such a case it might be as needfull for point of State to have the Prisoners remain in prison, where the King by such an absolute Command committed them, as to have them at all committed.

When they have taken them from the Prisons where before they were, they commit them to the *Marshall* of their own Court, which is but the first step to bailing them. Now it appears not indeed that they were bailed, for then *traditur in ballium* had followed : but nothing at all appears that they were denied it ; perhaps they never asked it, perhaps they could not find such as were sufficient to bail them. And in truth whensoever any man is but removed from any Prison in *England* ( though it be for debt or trespassse only ) into that Court, the *Entrie* is but in the self-same syllables as in these 4 Cases.

And in truth if these Presidents did prove that any of the Prisoners named in them were notailable, or had been thought by the Court to have been notailable, it will necessarily follow that no man living that is ordinarily removed from any other Prison into the *Kings Bench*, or that is there upon an ordinary action of debt or action of trespassse, could be bailed. For every man that is brought thither and not remanded, and every man that is but arrested for debt or trespassse, and not returned into that Court, is likewise committed to the *Marshall* of that Court, and by the self-same Entry, and no otherwise. Yet these 4 have been much stood on, and have strangely misled the judgement of some that either did not, or would seem not to understand the course of the Court.

The fifth of this nature is *Edward Page's Case*. It is *Trinit. 7. H. 8. Rot. 23*. This might have been well reckoned with the former 4. had not the mis-*entrie* only of the Clark made it varie from them. *Edw. Page* was committed to the *Marshalsey* of the Household, and that *per mandatum Domini Regis*, and returned to be therefore detained : and the *Entrie* is, *Qui committitur Marr. hospitii Domini Regis*. And this word *Marr.* is written in the Margent of the Roll.

This hath been also used to prove that the Judges did remand this Prisoner. If they had done so, the remanding had been only while they advised, and not any such award which is given when they adjudge him notailable. But in truth the word *Committitur* shewes that it was not any remanding of him : Nor doth that Court ever commit any man to the *Marshalsey* of the Household. And besides the word *Marr.* for *Marescallo* in the margent, shewes plainly that he was committed to the Marshall of the *Kings Bench*, and not remanded to the *Marshalsey* of the Household. For such *Entrie* of that word in the Margent is perpetually in cases of that nature, when they commit a man to their own prison, and so give him the first step to bailment, which he may have if he ask it, and can find baile. And doubtlesse those words of *hospitii predicti*. were added by the error of the Clark, for want perhaps of distinction in his understanding of the Mar-



shall of the *Kings Bench*, from the Marshall of the *Houſhold*.

The ſixth of theſe is *Thomas Ceſar's* Caſe. It is in the 8. *Jacobi Regis, Rot. 99*. This *Ceſar* was committed to the *Marſhalſey* of the *Houſhold per mandatum Domini Regis*, and returned to be therefore detained; and indeed a *remittitur* is in the Roll, but not a *remittitur quonſque*, but only that kind of *remittitur* which is uſed only whiles the Court adviſeth.

And in truth this is ſo farre from proving any thing againſt the Reſolution of the Houſe of Commons, that it appeares that the opinion of the reverend Judges of that time was, That the Return was inſufficient, and that if it were not amended the Priſoner ſhould be diſcharged. For in the Book of Rules of that Court of *Miſh. Terme*, when *Ceſar's* Caſe was in queſtion, they did expreſſy order that if the Steward and Marshall did not amend their Return, the Priſoner ſhould be abſolutely diſcharged. The words of the Rule are, *Niſi Sceneſcallus & Mareſcallus hoſpiti Domini Regis ſufficienter returraverint breve de habeas Corpus Tho. Ceſar, die Mercurii proxim. poſt quindenam ſancti Martini defendens exonerabitur.*

And this is all the force of that Preſident, but yet there hath been an interpretation uſed upon this Rule. It hath been ſaid that the Judges gave this Rule becauſe the truth was that the Return was falſe; and that it was well known that the Priſoner was committed not by the immediate Command of the King, but by the command of the Lord Chamberlain, and thence (as it was ſaid) they made this Rule. But this kind of interpretation is the firſt that ever ſuppoſed that Judges ſhould take any notice of the truth or falſhood of any Return, otherwiſe then the body of the Return could inform them. And the rule it ſelf ſpeakes plainly of the ſufficiency only, and not of the truth or falſhood of it.

The ſeventh of theſe is the Caſe of *James Demetrius, Edward Emerson*, and ſome others, that were Brewers, and were committed to the *Marſhalſey* of the *Houſhold per mandatum Domini Regis*, and ſo returned upon *habeas Corpus*. And it is true that the Roll ſhewes they were remanded; but the remanding was only upon adviſement. And indeed the grave and upright Judges of that time, were ſo carefull leaſt upon the entring of the remanding any ſuch miſtake might be, as might perhaps miſlead poſterity in ſo great a point, that they would have expreſſy the word *immediate* added to *remittitur*, that ſo all men that ſhould meet with the Roll might ſee that it was done for the preſent only, and not upon any debate of the queſtion. And beſides there is no *quonſque* to it, which is uſually added when the higheſt award upon debate or reſolution of this kind is given by them.

The eighth of theſe is the Caſe of *St Samuel Saltonſtall*. It is *Hill. 12. Jacob*. He was committed to the *Fleet per mandatum Domini Regis*, and beſides by the Court of *Chauncery*, for diſobeying an order of that Court; and is returned upon his *habeas Corpus* to be therefore detained.

tained. And it is true that a *remittitur* is entred in the Roll ; but it is only a *remittitur prisona predict.* without *quousque secundum legem deliberatus fuerit.* And in truth it appeares in the Record that the Court gave the Warden of the *Fleet* 3 severall dayes at severall times to amend his Return, and in the *interim remittitur prisona predict.* still. Certainly if the Court had thought that the Return had been good, they would not have given so many severall dayes to have amended it. For if that *mandatum Domini Regis* had been sufficient in the Case, why needed it to have been amended ?

The ninth and last of these is *Trinit. 13. Jacob. Rot. 71.* the Case of the said *S<sup>r</sup> Samuel Saltonstall.* He is returned by the Warden of the *Fleet* as in the Case before, and generally *remittitur* as in the Roll ; which proves nothing at all that therefore the Court thought he might not by Law be enlarged : and besides, in both Cases he stood committed also for disobeying an order in *Chancery.*

These are all that have been pretended to the contrary in this great point : and upon the view of them thus opened to your Lordships, it is plain that there is not one, not so much as one at all that proveth any such thing, as that persons committed by the Command of the King, or of the Lords of the Councell, without cause shewed, might not be enlarged, but indeed the most of them expressly prove rather the contrary.

Now, my Lords, having thus gone through the Presidents of Record that concern this point of either side, before I come to the other kind of Presidents which are the solemn resolution of Judges in former times, I shall ( as I am commanded by the House of Commons ) represent unto your Lordships somewhat else that they have thought very considerable, with which they have met while they were in a most carefull enquire of whatsoever concerned them in this great Question.

It is, my Lords, a draught of an Entry of a Judgement in that great Case lately adjudged in the Court of *Kings Bench*, when divers Gentlemen imprisoned *per speciale mandat. Domini Regis*, were by the Award and Judgement of the Court, after solemn debate, sent back to Prison, because it was expressly said, that they could not in Justice deliver them, though they prayed to be bailed.

The case is famous and well known to your Lordships, therefore I need not further mention it. And as yet indeed there is no Judgement entred upon the Roll, but there is room enough for any kind of Judgement to be entred. But, my Lords, there is a form of a Judgement, a most unusuall one, such a one as never was in any such Case before used, ( for indeed there was never before any Case so adjudged ) and this drawn up by a chief Clark of that Court, by direction of M<sup>r</sup> Attorney Generall ( as the House was informed by the Clark ) in which the reason of the Judgement, and the remanding of those Gentlemen is expressed



pressed in such sort, as if it should be declared upon Record for ever, that the Law were that no man could be enlarged from imprisonment that stood committed by any such absolute command.

The draught is only in *S<sup>t</sup> John Henningham's* Case, being one of the Gentlemen that was remanded, and it was made for a form for all the rest. The words of it are after the usuall Entrie of a *Curia advisur: vult* for a time, that *visis return. predict. nec non diversis antiquis Recordis in Curia hic remanent. consimiles casus concernentibus, maturaque deliberatione inde prius habita, eo quod nulla specialis causa captionis sive detentionis predict. Johannis exprimitur, sed generaliter quod detentus est in prisona predict. per speciale mandatum Domini Regis; ideo predictus Johannes remittitur prefato Custodi Marr. hospitii predict. salvo custodiend. quousque, &c.* that is *quousque secundum legem deliberatus fuerit*. And if that Court, which is the highest for ordinary Justice, cannot deliver him *secundum legem*, what Law is there (I beseech you, my Lords) that can be sought for in any other inferiour Court to deliver him?

Now, my Lords, because this draught, if it were entred in the Roll, (as it was prepared for no other purpose) would be a great declaration contrary to the many Acts of Parliament already cited, contrary to all Presidents of former times, and to all reason of Law, to the utter subversion of the chiefeft Liberty and Right belonging to every Free-man of the Kingdome, and for that especially also it supposeth that divers ancient Records had been looked into by the Court in like Cases, by which Records their Judgements were directed, whereas in truth there is not one Record at all extant that with any colour, not so much indeed as with any colour warrants the Judgement: therefore the House of Commons thought fit also that I should with the rest that hath been said, shew this draught also to your Lordships.

I come now to the other kind of Presidents, that is, solemn Resolutions of Judges; which being not of Record, remain only in authentick Copies. But of this kind there is but one in this Case, that is a resolution of all the Judges in *England* in the time of Queen *Elizabeth*. It was in the foure and thirtieth yeare of her reign, when divers persons had been committed by absolute command, and delivered by the Justices of one Bench or the other; whereupon it was desired that the Judges would declare in what Cases persons committed by such Command were to be enlarged by them. The resolution hath been variously cited, and variously apprehended.

The House of Commons therefore desiring with all care to enforme themselves as fully of the truth of it as possibly they might, got into their hands from a member of their House a book of selected Cases, collected by a learned and reverend Chief Justice of the *Common Pleas*, that was one of them that gave the Resolution, which is entred at large in that book, I mean the Lord Chief Justice *Anderson*. It is written in that book in his own hand, as the rest of the book is. And however it  
hath

hath been cited, and was cited in that great Judgement given upon the *habeas Corpus* in the *King's Bench*, as if it had been that upon such commitments the Judges might not baile the prisoners; yet it is most plain that in the resolution it self no such thing is contained, but rather expressly the contrary. I shall better represent it to your Lordships by reading it, then by opening it.

*Then it was read.*

If this Resolution doth resolve any thing, it doth indeed upon the matter resolve fully the contrary to that which hath been pretended, and enough for the maintenance of this ancient and fundamentall point of Liberty of the Person to be regained by *habeas Corpus*, when any man is imprisoned. And I the rather thought fit now to read it to your Lordships, that it might be at large heard, because in the great Judgement in the *Kings Bench*, though it were cited at the Barre as against this point of personall Libertie, as also at the Bench, yet though every thing else of Record that was used was at large read openly, this was not read either at Barre or Bench. For indeed if it had, every hearer would easily have known the force of it to have been indeed contrary to the Judgement.

My Lords, having thus gone through the Charge committed to me by the House of Commons, and having thus mentioned to your Lordships and opened the many Presidents of Record, and that draught of the Judgement in the like Case, as also the Resolution; I shall now, as I had leave and direction given me, least your Lordships should be put to too much trouble and expense of time in the finding or getting Copies at large of these things which I have cited, offer also to your Lordships authentick Copies of them all, and so leave them, and whatsoever else I have said, to your Lordships further consideration.

*The*



*The whole Copies of the Presidents of Record mentioned in one of the Arguments made at the first Conference with the Lords touching the Liberty of the Person of every Free-man.*

**I**Nter Recorda Domini Regis *Caroli*, in Thesaurario Receptus Scaccarii sui, sub custodia Dom. Thesaurarii & Camerarii ibidem remanentia, viz. Placita coram Domino Rege apud *Westmonasterium* de Termino Paschæ anno Regis *E.* (3. post conquestum) Angliæ 15. inter alia sic continetur ut sequitur.

Adhuc de Termino Paschæ, *London* sc.

Dominus Rex mandavit dilecto & fideli suo *Roberto de Dalton* Constabulario Turris suæ *London*, vel ejus locum-tenenti, breve suum in hæc verba: *Edwardus* Dei gratia *Angliæ & Franciæ* Rex, & Dominus *Hiberniæ*, dilecto & fideli suo *Roberto de Dalton* Constabulario Turris suæ *London*, vel ejus locum-tenenti salutem. Mandamus vobis quod *Johannem de Bildeston* Cappellanum, quem vicecomites nostri *London* ad mandatum nostrum apud prædictam Turrim vobis liberabunt, ab eisdem recipiatis, & in prisona nostra Turri prædicta custodiri faciatis, quousque aliud vobis super hoc duxerimus de mandato. Teste me ipso apud Turrim nostram *London*, trigesimo die *Martii*, anno Regni nostri *Angliæ* sextodecimo, Regni vero nostri *Franciæ* tertio.

Et modo scilicet in *Craft*. *Ascension*. Dom. anno Reg. nunc 18. coram Domino Rege apud *Westm.* venit *Johannes de Wyndwick* locum-tenens prædicti Constabularii, & adduxit coram Justiciarios hic in Curia prædicta *Johannem de Bildeston*, quem alias à præfatis vicecomitibus virtute brevis prædicti recipit &c. Et dicit quod ipse à Domino Rege habuit in mandatis ducendi & liberandi Corpus ipsius *Johannis de Bildeston* præfat. Justic. hic, &c.

Et quæsitum est à prædicto *Johanne Wyndwick*, si quam aliam detentionis præfat. *Johannis de Bildeston* habeat causam. Qui dicit quod non nisi breve prædict. tantum. Et quia videtur Curia breve prædict. sufficientem non esse causam prædict. *Johannem de Bildeston* in prisona *Marescall*. Reg. hic retinend. &c. idem *Johannes* dimittitur per manucaptionem *Willielmi de Wakefield* Rectoris Ecclesiæ de *Willingham*, *Johannis de Wyndwick* de com. *Lancastr.* *Johannis de Lakenham*, & *Johannis de Norton*, de com. *Norfolciæ*, *Nicolai de Wandesford* de com. *Midd.* & *Rogeri de Bromley* de com. *Staff.* qui eum manuceperunt habendi eum coram Domino Rege in Octabis sanctæ Trinitatis ubicunque &c. viz. corpora pro corpore. Ad quas Octab. sanct. Trinit. coram Domino Rege apud *Westm.* venit prædict. *Johannes* per mandatum prædict.

prædict Et super hoc Dominus Rex mandavit Justiciariis suis hic quodam Breve suum Clausum in hæc verba;

*Edwardus Dei gratia Rex Anglia & Francia, & Dominus Hibernia,* dilectis & fidelibus suis *Willielmo Scott* & sociis suis Justiciariis ad Placita coram nobis tenenda assignatis, salutem. Cum nuper mandaverimus dilecto & fidei nostro *Roberto de Dalton* Constabulario Turris nostræ de *London*, vel ejus locum-tenenti ibidem, quod *Johannem de Bildeston* Capellanum & detentum in prisiona Turris prædict. præcept. nostro pro suspicione contrafact. magni Sigilli nostri, cum attach. & aliis causis captionem & detentionem prædict. tangentibus, salvo vel secure duc. facerent coram nobis in crastin. Ascensionis Domini, ubicunque tunc fuisset in *Anglia*, prisionæ Maresc. nostri ibid. liberandum, in eadem quousque per quendam *Informatorem* essemus plenius informati, custodiendum, vel habita inde informat. prædict. ulter. super hoc fieri facerimus quod fore videramus faciendum secundum legem & consuetudinem Regni nostri *Anglia*; nos in casu quod dictus Informator non venit coram nobis ad informandum nos plenius super præmissis, nolentes eidem *Johanni* eadem de causa justitiam differri in hac parte, vobis mandamus, quod si prædict. Informator in quinden. Sanctæ Trinitatis proxime futurum vel citra, non venerit nos super præmissis plenius Informatur tunc adventum ejusdem Informatoris minime expectato eidem *Johanni* super hoc fieri faciatis justitiæ complementum, *Johan.* prout fore videritis faciendum secundum legem & consuetudinem Regni nostri *Anglia*. Teste me ipso apud *Westmonast.* 12 die Maii, anno Regni nostri *Anglia* 18. vero nostri *Francia* 5.

Quo quidem Breve inspecto, facta est Proclamatio quod si quis Dominum Regem super præmissis informare, vel erga ipsum *Johannem* prosequi voluerit, quod veniat, &c. Et super hoc ven. prædict. *Will. de Wakefield, Nicol. de Wandsworth, Johannes Brunwyn, Johannes Lagerham, Johannes de Norton, & Roger de Bromeley*, omnes de comitatu *Middlesex.* & manuceperunt prædict. *Johan. de Bildeston*, habend. cum coram Domino Rege de die usque ad præfat. quindenam Sanctæ Trinitatis ubicunque, &c. Ad quem diem anno 18. coram Domino Rege apud *VWestmonasterium* venit prædictus *Johann. de Bildeston*, per mandatum prædict. & iterata facta est proclamatio in forma qua superius, &c. Et nullus venit ad Dominum Regem informandum, &c. per quod concess. est quod prædict. *Johann. de Bildeston* eat inde sine die salva causa semper actione Domini Regis siquam, &c.

De Termino sancti Hilarii anno 22. Hen. 8. & per Com.  
rot. ejusdem Rot. 37. *London* cum *Gloucest.*

*Johannes Parker* per *Richard. Coppin & Vill. Dansay* vicecomites *London* virtute Brevis Domini Regis de latitas pro pace vers. ipsum *Johann. Parker* ad sectam *Johann. Bunton* eis inde direct. et coram Rege duct. cum causa, viz. Quod idem *Johannes Parker* captus fuit in Comitatu prædicto pro securitate pacis prædict. ac pro suspicione felloniæ per  
O ipsum



ipsum apud *Curmall* in comitatu *Gloucestræ*, perpetrat. per nomen *Johannis Parker* de *Thornbury* in comitatu *Gloucestræ* Tonfor, alias dictus *Johannes Charles* de eodem comitatu Surgeon, ac per mandatum Domini Regis nunciat. per *Robertum Moore* generosum de *Cliffords Inne*. Qui committitur Marescallo, & isto Termino traditur in ballium, *Thomas Atkins* de eisdem vill. & comitat. *Weaver*, usque à die Paschæ in unum mensem ubicunque &c. Et quod idem *Johannes Parker* citra eundem diem personaliter compareret coram Justiciariis Domini Regis ad proximum general. Gaol. deliberationem in comitatu *Gloucestræ*, proxime tenendam, ad subjiciendum & recipiendum omnia & singula quæ præfati Justiciarii de eo tunc ordinare contigerint, &c. corpus pro corpore, &c.

Ad quem diem præfat. *Johannes Parker* licet ipse quarto die placiti ad comparandum non venit, Ideo capierunt eum & pleg. octab. Trinitatis ad quem diem exactum Trin. return. postea Trin. 28. H. 8. ex in 15 Pasche Ad quem diem breve & vicecomes return. quod adhuc tent. apud *London*, die Lunæ proxime post festum Sanctæ Scholasticæ. Anno Regni H. 8. 28. prædictus *Johannes Parker*, *Thomas Atkins*, & *Villelmus Note*, ulterius fuerunt, prout patet per breviam Regis tertio Pasche anno 25. Regis prædict.

De Termino Sancti Mich. anno 35. H. 8. & per Com. ro. ejusdem. Rot. 33. Surr. cum *Bucks*.

*Johannes Bincks* per *Robertum Dacres* Armiger Senescallus Marr. & *Radulphum Hopton* Marr. ejusdem curiæ virtute brevis Domini Regis ad subjiciendum & recipiendum, &c. et eis inde direct. & coram Domino Rege ductus cum causa, viz. quod ante adventum brevis prædicti *Johannes Bincks* captus fuit per mandatum privati Consilii Domini Regis pro suspitione felloniæ & pro aliis causis illos moventibus & ductus ad Gaolam Marr. & ibidem detent virtute mandati prædicti, Qui committitur &c. Immediate ex gratia cur. special. prædictus *Johannes Bincks* per nomen *Johannis Bincks* de magna *Marlow* in comitatu *Bucks* weaver traditur in balliam, *Thomas Bignam* de *London* generos. & *Johan. Woodward* de *Marlow* prædict. Tailor, usque in crastinum sancti Martini ubicunque &c, uterque pleg. corpus pro corpore &c. Ad quem diem comparuit et *Robertus Darcy* Armig. et *Johannes Bosse* Generos. Domini Justitiar. Dom. Regis ad Pacem in Comit. *Bucks* virtute Brevis Dom. Regis eis direct. Dom. Regi certificaverint quod Indictamenta de aliquibus Felon. et transgression. versus prædict. *Joannem Bincks* coram eis ad præsens resident. Et ulterius de gestu & fama ipsius *Joannis Bincks* per sacrament. proborum & legalium hominum comitatu *Bucks*, diligenter inquirend. fecere, Et nihil aliud præter bonum de eo coram eis est comportum, ideo concessum est prædictus *Johannes Bincks*, de præmissis eat inde sine die deliberatur per proclamationem, prout mos est.

Sine die  
per procla-  
mationem.

De

## De Termino Pasche, &amp;c.

De Termino Pasche anno 2. et 3. Phil. et Mar. Regis et Regina  
rot. 58. London. sci.

*Richardus Overton de London* generosus, per *Thomam Leigh & Johannem Marshall* Vicecomites *Londini* virtute brevis Domini Regis & Reginae, de Habeas Corpus ad stand. rect. eis inde direct. coram *Willielmo Portman*, mil. Capital. Justiciar &c. ductus cum causa, viz. quod predictus *Richardus Overton* nono die Octobris, ult. praterit. commissus fuit in prisona de *Newgate*, & ibidem in eadem prisona sub custodia dictorum vicecom. detent. ad mandatum prenobilium Dominorum honorabilis Consilii predict. Domini Regis & Reginae, Qui committitur Mart. &c. Et immediate traditur in ballium. *Willielmo Overton de Lond n* generos. & *Johanni Tayler*, de parochia sancti Martini apud *Ludgate London*, mercer, usque octab. Trinitatis, viz. uterque manucapt. predict. corpus pro corpore. Et postea Trin. secundo *Elizabetha Regina*, cap. *Overton* & pleg. suos Octab. Michaelis. Ad quem diem ex mense Pasche. Ad quem Vicecomitem retorn. quod ad Husting suum tenent apud *Guildhall* civitati *Londini* die lune proxime post festum sancti Georgii Epi. predictus *Willielmus Overton* ulterius est per brevia pacis anno supra dicto.

De Termino sancti Michaelis anno 2. & 3. Phil. & Mar. Regis & Reginae Rot. 6.

Habet Cart. allocat. Trin. 2. & 3. Phil. & Mar. Regis & Reginae &c. Midd. sci.

*Richardus Overton* nuper de *London* generos. captus octab. Hillarii pro quibusdam altis prodicionibus unde indictatus est, Ad quem diem capt. 15 Pasche exon. craftina Animarum.

De Termino Pasche anno 4 & 5 Phil. & Mar. Regis & Reginae,  
Et per com. ro. ejusdem rot. 45. Turr. London.

*Edwardus Newport* generosus per *Robertum Oxenbridge* mil. Constabularium Turris predicti, virtute brevis Dom. Regis & Reginae de Habeas Corpus ad subjiciendum, &c. Ei inde directum ad Barr. coram Domino Rege & Regina duct. cum causa, viz. Quod ipse sibi commissus fuit per mandatum Consiliorum Domine Reginae, qui committitur Marrescallo, &c. et immediate traditur in ballium, prout patet. Et postea sine die per parol. virtute brevis gestu & fama prout patet rotul. 17. istius anni & etiam patet super ballium inter scruct istius Termini affilat &c.



De Termino sancti Michaelis anno 4 & 5 Phil. & Mar. Regis & Reginae & per scruet ejusdem rot. 17.

Memorandum, quod 14 die Octobris anno Regnorum Dominorum Phil & Mar. Regis & Reginae nunc quarto & quinto, *Edwardus Newport de Hamley* in comitatu *Wigorn.* fuerit suppositus & ea de causa per mandatum Consiliorum Dominorum Regis & Reginae, ad Barr. hic ductus fuit, qui committitur Marefcallo, &c. Et super hoc idem *Edwardus Newport* in ballium *Thomae Charr*, de *Laton* in comitatu *Essex* generosus *Johanni Baker* Clerico ordinario *London*, *Johanni Gill* de Parochia sancti *Thomae Apostoli London Clothworker* & *Richardo Parkes*, de *Bromesgrove* in comitatu *Wigorn* *Yeoman*, usque octab. *Hillarii* ubicunque, &c. viz. Quilibet pleg. prædict. sub poena 100 l. Et prædictus *Edwardus* sub poena 200 l. Quas &c. Ad quem diem committitur Constabulario Turris *London* per mandatum Consiliorum Dominorum Regis & Reginae ibidem salvo custodiri quousque, &c. Et postea 4 & 5 Phil. & Mar. traditur in ballium, prout patet per scruet finium ejusdem Terminii. Et postea *Michaelis* 5 Phil. & Mar. exoneratur per Cur. eo quod tam per sacrament. duodecim proborum legalium hominum de prædict. com. *Midd.* coram Dom. Rege & Regina hic in curia in ea parte jurat & onerat quam per sacrament. duodecim proborum & legalium hominum de corpore dicto comitatu *Wigorn* coram *Edwardo Saunders*, & *Johanne Whiddon* Mil. & Justiciar. Dominorum Regis & Reginae ad pacem ac diversis felonis transgressionibus & malefactionibus in eodem comitatu perpetrat audiendum & terminandum assignat virtute brevis Dominorum Regis & Reginae eis inde directis in ea parte similiter jurat & onerat, ad inquirendum de gestu & fama ipsius *Edw.* compert. existit quod idem *Edw.* est de bonis gestu & fama. Ideo proclamatio inde facta prout moris est secundum legem & consuetudinem Regni Angliæ, &c. Consideratum est, quod prædictus *Edwardus* eat inde sine die, &c.

Deliberatur  
per paroll.

De Termino Pasche anno 9. Eliz. Reginae, Rot 35. *London* sci.

*Thomas Lawrence* per *Christophorum Draper* Major Civitatis *Londini* ac *Ambrosium Nicholas* & *Richardum Lumbar*d, vicecomites ejusdem civitatis virtute brevis Dominae Reginae de *Habeas Corpus* &c. ad prosequendum, &c. eis inde directum. Et coram Domina Regina duct. cum causa, viz. quod septimo die *Novembris* anno Regni Dominae *Elizabethae*, nunc Reginae Angliæ octavo *Thom. Lawrence* in dicto breve nominat captus fuit in civitate prædict. & in prifona dict. Dominae Reginae sub custodia prædict. vic. deten. per mandatum Concilii Dominae Reginae. Qui committitur Marefcallo, Et postea traditur in ballium prout patet per scruet finium istius Terminii.

Bal. pardon.

De Termino Pasche anno 9. Eliz. Reginae, Rot. 68. *Turr. London.*

*Robertus Constable*, per *Franciscum Jobson* milit. Locum tenent. *Turris*

ris *London* virtute brevis Domine Regine de *Habeas Corpus*, ei inde direct. & coram Domina Regina duct. cum causa, viz. Quod *Robertus Constable* præfat. *Francisc. Jobson* commissus fuit per <sup>pardon.</sup> mandatum privati Concilii Domine Regine salvo custodiri. Qui committitur Marrescallo, Et postea isto eodem Termino traditur in ballium.

De Termino *Pasche* anno 20. *Elizabetha* Regine et per scruct ejusdem, *Rot. 72. Turris London.*

*Johannes Browning* per *Owinum Hopton*, mil. locum tenentem Turris Regine *London*, virtute brevis Domine Regine de *Habeas Corpus* ad subjiciendum & recipiendum ei inde direct. Et coram dilectis & fidelibus Justiciariis domine Regine ad placita coram nobis tenen. assign. apud hospitium suum in *Sergeants Inne Fleetstreet London*, die Lunæ, viz. Prædictus *Johannes Browning*, commissus fuit eidem loco tenenti per Privatum Concilium Domine Regine, salvo custodiend. &c. Qui committitur Marr. Et postea isto eodem Termino traditur <sup>Marr.</sup> in ballium prout patet per scruct finium istius Termini. <sup>Ball.</sup>

De Termino sancti *Hillarii* anno 40. *Elizabetha* Regine, Et per com. rol. ejusdem, *rot. 62.*

*Edwardus Harecourt*, per *Hugonem Parlor* Custod. prisonæ Domine Regine de *le Gatehouse* infra civitatem *Westm.* in comitatu *Midd.* virtute brevis Domine Regine de *Habeas Corpus* ad subjiciendum &c. ei inde directum. Et coram Domina Regina apud *Westmonasterium* duct. cum causa viz. quod ante adventum brevis prædict. scilicet 7. die *Octobris* anno Regni Domine Regine nunc 39. corpus *Edwardi Harecourt*, per Dominos de privato Concilio ei commissus fuit salvo et secure custodiend. certis de causis ipsos moventibus ac ei ignotis, Qui committitur Marrescallo, & postea isto eodem Termino <sup>Marr. bal.</sup> traditur in ballium prout patet per scruct finium istius Termini.

De vacatione *Hillarii* anno 43. *Eliz. Regina. Fleet, sc.*

*Robertus Catesby* per *Johannem Phillips* Gardian de *le Fleet* virtute brevis Domine Regine de *habeas Corpus* ad subjiciendum, &c. ei inde directum, & coram *Edwardo Fennor* uno Justiciar. domine Regine ad placita coram ipsa Regina tenendum assignat. apud *Vinchester house* in Burgo de *Southwarke* in comitatu *Surr.* duct. cum causa, viz. quod prædictus *Robertus* commissus fuit prisonæ prædict. primo die Martii anno 43. Regine per warrantum diversorum prænobilium virorum de privato Concilio Domine Regine in hæc verba.

To the warden of the *Fleet* or his deputy. These shall be to will and require you to receive at the hands of the keeper of the *Compter* of



*Woodstreet* the person of *Robert Catesby Esquire*, and him to retain and keep safely in that prison under your charge untill you shall have other direction to the contrary wherein this shall be your warrant. Et præfatus *Rob.* commissus fuit Marrescallo per præfatum *Edm. Fenner*, Et statim traditur in Ballium prout patet, &c.

De Termino Sancti Hillarii anno 12. Jacobi Regis rot. 153.

*Ricardus Beckwith* generosus per *Aquilam VVykes*, Custod. prisonæ prædict. virtute brevis Domini Regis de *habeas Corpus* ad subjiciendum, &c. ei inde direct. & coram Domino Rege apud *VWestmonasterium* duct. cum causa, viz. quod ante adventum brevis prædicti, scilicet, decimo die Junii, Anno Regni Domini Jacobi Regis Dei gratia *Anglia, Francia, & Hibernia*, fidei defensor, &c. 11 & *Scotia* 47 prædictus *Richardus Beckwith* sibi commissus fuit prisonæ prædictæ sub custodia sua virtute brevis & cujusdam warranti sibi facti & directi per *Georgium* Divina providentia Archiepiscopum *Cant.* totius *Anglia* Primat & Metropolitanum. *Hen.* comitem *Northampton*, Dom. Gardianum quinque portuum ac unum de Privato Consilio Regiæ Majestatis, *Thom.* comitem *Susfolcia*, Dominum Camerarium Regis Familiæ ac è sacris Consiliis Regiæ Majestatis. *Edward.* dominum *VVolton* Gubernator Regiæ Familiæ & *Johannem* dominum *Stanhope*, Vic. Camerar. Regiæ Familiæ cujus warranti tenor sequitur in hæc verba.

To *Aquila VVykes* keeper of the Gatehouse in *VWestminster*, or his deputie. Whereas it is thought meet, that *Miles Raynard* and *Richard Beckwith* be restrained of their Liberty and committed to the prison of the Gatehouse, These shall be to will and require you to receive the persons of the said *Raynard* and *Beckwith* into your charge and safe keeping in that prison, there to remain untill you shall have further order from us in that behalf, for which this shall be your warrant, dated at *VWhitehall* this tenth of July 1623. Et hæc est causa detentionis dicti *Richard's Beckwith* in prisonæ prædict. Qui committitur Marrescallo. Et postea isto Termino traditur in ballium, prout patet per scruct istius Termini.

De Termino Sancti Mic. anno 14 Jacobi Regis, Et per scruct ejusdem Rot. 147.

*Thomas Monson* miles per *Georgium Macre* mil. locum tenent. Turris Domini Regis *London*, virtute brevis Domini Regis de *habeas Corpus*, ad subjiciendum, &c. ei inde directi coram Domino Rege apud *Westmonasterium* ductus cum causa, viz. quod ante adventum brevis prædicti *Thomas Monson* sibi commissus fuit per warrantum a diversis Dominis de privato Concilio Domini Regis sibi direct. Qui committitur Marefcallo, & super hoc traditur in ballium prout patet per scruct finium istius Termini.

De

De Termino Sancti *Mic.* anno 7, *H.* 7. per cōm rot. ejusdem.

*Thomas Brugg* junior nuper de *Tonington* in comitatu *Hereford*, *Johannes Rawlings* de *Hominstre* in comitatu prædict. *Robertus Sherman* recuss. nuper de eadem in comitatu prædict. *Walber*, *Thomas Hofier* nuper de eadem in eodem comitatu *Smith. Cadwallader ap Johan.* dux nuper de *Key* in *Marchia Wallie* in comitatu *Salop* adjacend-generos. *Reginaldus Sherman* & *Thomas Tanner* nuper de *Kingston* in comitatu *Hereford*, sunt in custodia Marr. ad mandatum Domini Regis, ac pro aliis certis causis prout patet alibi de Recordo, &c. per Record. istius Termini, postea isto Termino Dominus Rex relaxavit mandatum suum, & pro recuss. prædict. comparuer. Attorn. &c. Et quod ulterius versus præfatum *Thomam Brugg* revocatur isto Termino & prædictus *Johannes Rawlings* traditur in ballium prout patet alibi &c. Ideo hic Marr. de eis omnibus per cur. exoneratur, &c.

De Termino sancti *Hillarii* anno 7. *H.* 7. & per com. ro. ejusdem, rot. 13.

*Willielmus Chace*, *Henricus Charr*, *Thom. Rolleston*, *Thomas Street*, *Robertus Feldace* & *Henricus Rand* sunt in custodia Marr. ad mandatum Domini Regis &c. ac corpus prædict. *Willielmus Chace* pro pace *Radnor Joselyn* inveniend. &c. *Pasche* sequen. pet. postea Termino sequen. prædict. Dominus Rex mandatum suum prædict. quo ad prædict. *Will. Chace* relaxavit, per Reg. Attorn. & pro pace & pro felonie & murdr. traditur in ballium idem.

De Termino *Pasche* 7. *H.* 7. & per com. ro. ejusdem rot. 18.

*Johannes Wyddesbury* in comitatu *Staff. Arm.* est in custodia Marr. ad mandatum Domini Regis &c. per Record. istius Termini postea scilicet *Trin* 7. *H.* 7 sequen. prædictus *Johannes Beaumont* demandat prædict. per cur. exonerat existit. Ideo Marr. de eo per eandem cur. exoneratur, &c.

De Termino sancti *Michaelis*, anno 7. *H.* 7. rot. 8. *London* sci.

*Thomas Tow* nuper de *Villa de Staff.* in comitatu *Staff.* yeoman per *Johan. Shaw* & *Richardum Haddon* vicecom. *Londini*, virtute brevis Domini Regis de *Habeas Corpus*, ad sectam ipsius Regis eis inde direct. coram Rege duct. cum causa, viz. quod idem *Thomas Tow* attach. fuit per *Richard. Whittington Sergeant* apud *Baynards Castle* civitate prædict. & prison. Domini Regis infra eandem civitatem prædictam salvo custodiendum, commissus pro suspicione felonie apud *Coventry* in comitatu *War.* perpetr. ad suggestionem *Willielmum King Inboulder*. Ac in super idem *Thomas Tow* detinetur in prisona prædict. virtute cujusdam alterius quæ, relæ versus ipsum ad sectam *Johannis Freeman Sergeant* de eo quod inveniat ei sufficient securitatem pacis in curia coram *Johannem Wynger* nuper



per Vic. Ac ulterius idem *Thom. Tow* detentus est in prifona prædict. pro 14 l. debitum & 2 s. 8 d. Et etiam idem *Thomas* detinetur in eadem prifona ad mandatum Domini Regis, Qui committitur Marr. &c. Postea fcilicet Termino fancti *Trinitatis* anno 19. Regis *Henrici* 7. prædictus *Johannes Freeman* relaxavit fecuritatẽ pacis verfus eundẽ *Thomam Tow*, dictusque *Robertus Carvell* recognovit fe fore fatisfact. de debitis. Ac *Johannes Hubbard* General. Attorn. Domini Regis, nomine ipfius Regis relaxavit mandatum Domini Regis. Et pro fufpicionẽ felonie prædict. traditur in ballium, *Simon Little de London Taylor*, et *Johannem Afh de London Skinner*, ufque octab. *Michaelis* ubicunque &c. ad quem diẽ comparuit, Et *Robertus Throgmorton* miles unius cuftod. pacis prædict. committitur warrant. retorn. quod nul. indicaverit de aliquibus felonis five transgreffionibus verfus præfatum *Thomam Tow* coram eo & fociis fuis direct. per facramentum 12 proborum & legalium hominum de visu de *Coventrey* prædict. de gefu & fama prædict. *Thom.* diligent. inquisitione fecerunt nihil de eo præter bonum coram eo & fociis fuis eſt compertum fed eſt de bono gefu & fama. Ideo conceſſum quod prædictus *Thomas Tow* eat fine  
 Sine die. die. &c.

Anno 9. H. 7. et per ſcruct ejufdem Rot. 13.

*Humfridus Botche*, nuper de *Canterbrigg* in comitatu *Cantabrigienſis* Scholar per *Robertum Willoughby* Dom. Brook, mil. Senefcal. hoſpitii Domini Regis, ac *Johannem Digby*, mil. Mareſcall. cur. Mareſc. hoſpitii prædict. virtute brevis Domini Regis de Habeas Corpus, ad ſectam ipfius Regis ad ſtandum recte &c. ad ſectam pacis ut legatur eis inde direct. coram Rege duct cum cauſa, viz. Quod idem *Humfridus Botche*, commiſſus fuit gaol. Mareſcalli hoſpitii prædict. per mandatum Domini Regis, Et hæc eſt cauſa & non alia, quod idem *Humfridus* in prifona prædicta detinetur. Qui committitur & poſtea *Pafche* ſequen. Dominus Rex relaxavit mandatum ſuum Capital. Juſticiar. per *Thomam Lowell* mil. oſtenſus et pro ult. præd. tenetur prædict alibi &c.

De Termino fancti *Trinitatis* anno 39. *Elizabetha* Regina & per com. 10. ejufdem 118. *le Gatehouſe*.

*Lawrentius Broom* per *Hugonem Parlor* cuſtod. prifonæ Domine Reginae de *le Gatehouſe* virtute brevis Domine Reginae de habeas Corpus ad ſubjiciendum ei inde direct. &c. coram Domina Regina apud *Westm.* duct. cum cauſa, viz. quod prædictus *Lawrentius Broom* in arcta cuſtodia ſua remanſit per mandatum Dominorum de Concilio, Sereniſſimæ Domine Reginae pro certis cauſis eos moventibus, Qui committitur Marr. & poſtea iſto eodem Termino traditus fuit in ballium prout patet per ſcruct finium iſtius Terminii.  
 Marr. Ball.

Per

Per scruct finium Terminii prædicti anno 39. *Eliz. Regina. Essex.*

*Lawrentius Broom* de parva *Bradowe* in comitatu prædict. *hus-*  
*bandman*, traditur in ballium ad subjiciendum, &c. per manda- *usque o-*  
*ctab. Mi-*  
*chaelis.*  
 tum privati Concilii Dominæ Regine super *habeas Corpus*, *Ra-*  
*dolpho Mayall* de *Hatfield Penell* prædict. *Henr. Undall* de eadem gener.  
*Willielmo Ecclesden* de *Westm. Bricklayer*, *Richardo Morgan*, de *Westm.*  
*Labourer*, uterque pleg. sub pœna 40 l. & sub pœna 100 l. Marr. pro  
 suspitione proditionis cum *Johanne Smith* mil.

De Terminio sancti *Michaelis* anno 40 *Elizabetha* Regina, et  
 per com. ro. ejusdem rot. 37. *Midd. sci.*

*Thomas Wenden* per *Hugonem Parlor* generos. custod. prisonæ Domi-  
 næ Regina de *le Gatehouse* virtute brevis Dominæ Regina de *habeas*  
*Corpus*, ad subjiciendum, &c. ei inde direct. & coram Domina Regina  
 apud *Westm.* duct. cum causa, viz. Quod 18. die Junii anno Regni Do-  
 minæ *Elizabetha* nunc Regina Angliæ 38. Corpus infra nominati *Tho-*  
*Wenden* extra curiā ejusdem Dominæ Regina Angliæ coram ipsa Dom.  
 & Concilio suo in Camera stellata prisonæ Dominæ Regina de *le Gate-*  
*house*, sub custodia sua pro certis causis eisdem Dominæ Regina, & con-  
 cilio suo moventibus & ei ignotis, commissus fuit salvo custodiend. do-  
 nec aliud inde habuerit præcept. Et hæc est causa detentionis, prædict.  
*Thoma* in prisona prædict. Qui committitur Marr. &c. Et *Marr. ball.*  
 postea isto eodem Terminio traditur in ballium, prout pa-  
 tet per scruct finium istius Terminii.

Per scruct finium de Terminio sancti *Michaelis* anno 39. & 40.  
*Elizabetha* Regina.

*Thom. Wenden* de *Aldham* in comitatu *Essex*, *Yeoman* traditur *Mar.*  
 in ballium super *habeas Corpus* ad subjiciendum, & recipiendum.

*Johannes Wenden* de *Colmewalle* in comitatu prædict. *yeo-* *usque octab.*  
*Hillar.*  
*man, Will. Beriffe* de *Aldham*, prædict. in comitatu prædict.  
 gen. *Radolpho Northen* de *Aldham* in comitatu prædict. *yeoman*, quilibet  
 prædict. sub pœna 200. Marcis, & pars sub pœna 200 l.

Idem *Thom Wenden* traditus fuit in ballium per consens. Dominorum  
 privati Concilii per Relationem Attorn. Dominæ Regina general. sub  
 R. capt. sub Terminum post crastin. Martini.

De Terminio *Hillarii* anno *Eliz. Regina Rot. 89.*

Domina Regina mandavit prædilecto & fideli Conciliario suo *Johan-*  
*nem Popham* mil. capital. Justic. Dominæ Regina ad placita coram ipsa  
 Regina tenend. assignat. Ac dilectis & fidelibus suis *Johanni Clench*  
 P. *Fran-*



*Francisco Gawdy & Edwardo Fennor* Justiciar. ipsius Dominae Reginae ad placita praedict. aut eorum alicui breve suum de privato Sigillo, manu sua propria quod sequitur in haec verba.

By the Queen.

Trustie and welbeloved, we greet you well. Whereas *William Constable* late of *London* Knight. *Robert Vernon* late of *London* Knight, *Henry Lincey* late of *London* Knight. *Ellis Jones* late of *London* gent. *Charles Ogle* late of *London* gent. *Robert Pitchforke* late of *London* gent. *John Wright* late of *London* gent. *Christopher Wright* late of *London* gent. and *Edmund Whitlocke* late of *London* gent. for the late treasonable attempt of the late Erle of *Essex*, have been committed to sundry places and prisons, for their offences committed, some in one sort, some in another, and stand amongst others indicted of high Treason for their severall offences. Forasmuch as of our princely disposition we are graciously bent to extend our grace and favour unto them and that they shall be bailed. We will and command you or any of you, to bail the above named persons, or any of them to appear before us in our Court commonly called the *Kings Bench*, at such time, and in such manner and form, as to you or any of you shall seem meet. And this shall be your sufficient warrant and discharge in that behalf.

To our trusty and welbeloved Counciller *Sr John Popham* Knight, Chief Justice of our Pleas to be holden before us.

To our trusty and welbeloved *John Clench*, *Francis Gawdy* and *Edward Fennor* Justices of the same Pleas or any of them.

De Vacatione *Hilarii* anno 43. *Eliz.* Reginae. *Gatehouse.*

*Robertus Vernon* nuper de *London* mil. *Henricus Lincey* nuper de *London* mil. & *Carolus Ogle* nuper de *London* generos. per *Willielmum Okey*, custod. prisonae de *le Gatehouse* virtute brevis Dominae Reginae de *habeas Corpus* ad subjiciendum, &c. Ei inde direct. & coram *Francisco Gawdy* uno Justiciar. Dominae Reginae ad placita coram ipsa Regina tenend. assignat apud hospitium suum in *Chauncery lane London* duct. cum causa, viz. Quod praedictus *Robertus*, *Henricus* & *Carolus* sibi commissi fuerint per mandatum privati Concilii Dominae Reginae pro quibusdam altis prodicionibus per ipsos fieri suppositi. Qui traduntur in ballium praetextu brevis, &c.

*Marr. Ball.*

De Vacatione *Hilarii* 43. *Eliz.* Reginae *Fleet*, sci.

*Henricus Carew* de *London* mil. per *Johannem Phillips* Gardian de *le Fleet*, virtute brevis Dominae Reginae de *habeas Corpus* ad subjiciendum &c. Ei inde direct. & coram *Francisco Gawdy* uno Justiciar. Dominae Reginae de placita coram ipsa Regina tenend. assign. apud hospitium suum

suum in *Sergeants Inne in Chauncery lane London* duct. cum causa, viz. quod prædict. *Henr.* commissus fuit prison. prædict. 11 die Februarii anno 43 Reginæ virtute cujusdam warranti diversorum prænobilium virorum de privato Concilio in hæc verba.

These shall be to require you to receive into your charge and custody from the hands of the Lord Major of *London* the person of *S<sup>t</sup> Henry Carew* Knight, who was in the late action of trayterous Rebellion, and to keep him safely close prisoner untill you shall receive order from us to the contrary. Qui traditur in ballium prætextu brevis, &c.

De Termino sanctæ Trinitatis primo Jacobi Regis rot. 30.

*Johannes Brocket* mil. per *Willielmum Okey*, custod. prisonæ de *le Gatehouse* in *Westm.* in comitatu prædict. virtute brevis Domini Regis de *habeas Corpus* ad subjiciendum, &c. Ei inde direct & coram Domino Rege apud *Westm.* duct. cum causa, viz. Quod ante adventum brevis prædict. scilicet, ultimo die Martii anno Regni Domini Regis primo prædict. *Johannes Brocket* mil. præfat. custod. de *le Gatehouse* commissus fuit per warrantum privati Concilii Domini Regis cujus tenor sequitur in hæc verba.

To *Will. Okey* keeper of the prison of the *Gatehouse* in *Westminster*.

These are to will and require you to receive into your charge and custody the person of *John Brocket* Knight, and him to detain in safe keeping under your charge untill you shall have further order for his enlargement, whose commitment being for some speciall matter concerning the service of our Sovereign Lord the King, you may not fail to regard this our warrant accordingly.

From the Kings Pallace at *Whitehall* the last of March, 1605.

Eaque fuit causa detentionis prædict. *Johannis* in prisona prædict. quia committitur *Marr.* &c. Et postea traditus fuit in ballium prout patet per scruct finium istius Terminii. Marr. Ball.

De Termino sancti Michaelis anno 12 Jacobi Regis Rot. 119.  
prison de *le Gatehouse*. sci.

*Milo Raynor* per *Aquilam Wykes* custod. prisonæ prædict. virtute brevis Domini Regis de *habeas Corpus* ad subjiciendum &c. coram Domino Rege duct. cum causa, viz. Quod ante adventum brevis prædict. scilicet decimo die Junii anno Domini 1613. prædict. *Milo Raynor* commissus fuit prisonæ prædict. & huc usque detent. virtute warranti cujusdam sibi facti & direct. per *Georgium* Archiepiscopum *Cantuariensis*, *Henr.* comitem *Northampton Thom.* comitem *Suff. Will.* Dominum *Knollis Edwardum* Dominum *Wotton* & *Richardum* Dominum *Stanhope*, cujus warranti tenor sequitur in hæc verba.



To *Aquila VVykes* keeper of the *Gatehouse* in *WVestminster*,  
or his deputie.

Whereas it is thought meet, that *Miles Raynor* and *Richard Beckwith* be restrained of their Liberty and committed to the prison of the *Gatehouse*, These shall be to will and require you to receive the persons of the said *Raynor* and *Beckwith* into your charge and safe keeping in that prison, there to remain untill you have further order in that behalf, for which this shall be your sufficient warrant.

Dated at *WVhitehall* the tenth of *July* 1613.

Et hæc est causa detentionis suæ in prifona prædict. Qui committitur Marrescallo. Et postea isto eodem Termino traditur in ballium, prout patet per scruct istius Termini.

Marr. Ball.

De Termino sancti *Hillarii* anno 4 et 5 *H. 7.* & per scruct ejusdem *Rot. 18.* de prædict.

*Richardus Everard* nuper de *Colchester* in comitatu *Essex.* Clericus, & *Robertus White* nuper de *Norwic. Smith*, per *Robertum Willoughby* mil. Dominum de *Brook* Senescal. hospitii prædict. virtute brevis Domini Regis de *habeas Corpus* ad sectam ipsius Regis pro quibusdam proditiombus & felonis unde in dicto comitatu *Essex.* indictati sunt, ei inde direct. coram Domino Rege duct. cum causa, viz. Quod iidem *Richardus Everard* & *Richardus White*, commissi fuerint in custodia Marr. prædict. Marr. per mandatum Domini Regis. Qui committitur Marr. &c.

De Termino sancti *Hillarii* anno 8. *H. 7* & per scruct ejusdem

*Rot 12.*

Mort. est in prifona prout per certificationem *Coron.* intr. *Pasche* 10. *H. 7.* affilat. *Surr.*

*Christopherus Burton* nuper de *Rocheſter* in comitatu *Kant. hackneyman*, per *Robertum Willoughby* Dominum *Brook*, militem Senescallum hospitii Domini Regis, ad *Johan. Digby* mil. Marresc. cur. Marresc. hospitii prædict. virtute brevis Domini Regis de *habeas Corpus* ad sectam ipsius Regis, ad subjiciend. &c. eis inde direct. coram Domino Rege duct. cum causa, viz. Idem *Christopherus* commissus fuit gaol. Marresc. hospitii prædict. per mandatum Domini Regis, et hæc de causa & non alia, Qui committitur Marresc. Ac super quendam abjurationem infra civitatem *Rottenſon.* facta isto Termino certificatur ad salvo custodiend. sub poena 100 l. &c.

Marr.

De Termino *Pasche* anno 19. *H. 7.* & per scruct ejusdem, *rot. 23.* *London ſci.*

*Georgius Urſwick* de *London Mercer*, per *Oliverum wood*, locum teneant.

nent. prisonæ Domini Regis de *le Fleet* virtute brevis Domini Regis de *habeas Corpus* ad sectam ipsius Regis ad conservand. &c. ei inde direct. coram Rege duct. cum causa, viz. Quod idem *Georgius Urswick* tertio decimo die Maii anno 19 Regis commissus fuit prison. de *le Fleet* prædict. per mandatum Domini Regis salvo custodi- *Marr.* end. sub poena 10 l. Qui committitur Marr. &c.

De Termino sanctæ *Trinitatis* anno 7. H. 8. & per scruet e-  
jusdem rot. 23. *Surr.*

*Edwardus Page* nuper de *London* generosus per *Georgium* comitem *Salopp.* Senescallum hospitii Domini Regis, & *Henr. Sharnburr* Marr. cur. Marr. hospitii prædict. virtute brevis Domini Regis ad conservand. diem, &c. eis direct & coram Rege duct. cum causa, viz. Quod idem *Edwardus* captus & detentus fuit in prisona Marr. prædict. per mandatum Domini Regis ibid. salvo custodiend. &c. Qui *Marr.* committitur Marr. hospitii Domini Regis.

De Termino sancti *Michaelis* anno 8 *Jacobi* Regis & per Scr.  
ejusdem rot. 99.

*Thomas Cesar* per *Thomam Vavasor* mil. Marr. Marresc hospitii Domini Regis, ac Marr & Marresc. hospitii virtute brevis Domini Regis de *habeas Corpus* ad subjiendum, ei direct. & coram Domino Rege apud *Westm.* duct. cum causa, viz. Quod ante adventum brevis prædict. scilicet, decimo octavo die Julii anno Regni dict. Domini Regis nunc Angliæ &c. septimo *Tho. Cesar* in breve præd. nominatus captus fuit apud *Whitehall* in comitatu *Midd.* per speciale mandatum Domini Regis & per eundem Dominum Regem ad tunc & ibidem salvo custodiend. quousque &c. Et ea fuit causa captionis & detentionis ejusdem *Thom Cesar.* Qui remittitur prison prædict. *Remitt.*

De Termino sancti *Michaelis*, anno 8 *Jacobi* Regis die Martis  
proxime post quindena Martini.

Nisi prædict Senescall. & Marr. hospitii Dom. Regis sufficienter re-  
turn. breve de *habeas Corpus Thom. Cesar*, die Martis proxime post quin-  
dena Martini defend. exonerabitur per curiam.

De Termino sancti *Hilarii* anno Regni *Jacobi* Regis 12. rot. 153.

*Jacobus Demetrius*, *Edwardus Emerson*, *Georgius Brookshaw* & *Will. Stephens*, per *Thomam Vavasor* mil. Marr. Marresc. hospitii Domini Regis virtute brevis de *habeas Corpus* ad subjiendum & recipiendum, &c. ei inde direct. & coram Domino Rege apud *Westmonast.* duct. cum causa, viz. Quod ante adventum brevis prædict. scilicet. 22. die Januarii anno Regni Domini nostri *Jacobi* Dei gratia Angliæ Franciæ, & *Hiberniæ* &c. 12 & Scoræ 48, prædictus *Jacobus Demetrius Edwardus*



*Emerson, Georgius Brookshaw & Willielmus Stephens* in breve huic Schedul. annex. nominati fuerunt Commiss. Gaol. Marresc. hospitii Domini Regis pro causis ipsum Regem & servitium suum tangentibus & concernentibus. Et hæc est causa captionis prædict. *Jac. Emerson, Georg. & Will.* & postea immediate remittitur præfat. Marr. hospitii prædict.

*Remittitur.*

De Termino sancti *Hilarii* anno 12 *Jacobi* Regis.

*Samuel Saltonstall* per *Johannem Wilkenfon* Ar. Gardian. prison. de le *Fleet*, virtute brevis Domini Regis de *habeas Corpus* ad subjiciendum, &c. ei inde direct. & coram Domino Rege apud *Westm.* duct. cum causa, viz. Quod idem *Samuel* commissus fuit prisonæ prædict. virtute warranti à Dominis de Privato Concilio Domini Regis undecimo die Martii 1608. & quod detentus fuit etiam idem *Samuel* in prisona prædict. virtute cujusdam ordinis in curia Canc. Domini Regis fact. cujus ordinis tenor patet per rot. record, istius Termin. Ad quem diem prædict. *Samuel* remittitur prisonæ prædict. et secund. dies proxim. post Term. dat. est præfat. gardiano prisonæ prædict. ad emend. return. suum sufficient. super breve prædict. de *habeas Corpus* & return. quod prædict. *Samuel* commissus fuit prisonæ prædict. undecimo die Martii 1608. per warrant. a Dominis de Privato Concilio dict. Domini Regis apud *Whitehall* tunc seden. Et quod postea undecimo die Februarii anno 1610. commissus fuit extra cur. Concil. Domini Regis apud *Westm.* pro contemptu suo, & quod tent. fuit etiam idem *Sam.* in prisona prædict. per mandatum Dom. Concilii. iterum remittitur prisonæ prædict. & ulterius dies dat. est præfat. Gardian. ad emend. return. suum super *habeas Corpus*, versus defend. prout stare voluer. usque diem Jovis proxim. post mensem *Pasche* tunc ad habendum corpus, &c. Ad quem diem præfat. Gardian. habuit corpus hic in curia, & return. super *habeas Corpus* quod prædict. *Samuel* commissus fuit prisonæ prædict. 11 Martii anno 1608. virtute cujusdam warranti a Dominis de privato Concilio Domini Regis tunc seden. apud *Whitehall*. Et quod etiam commissus fuit idem *Samuel* prisonæ prædict. 11 die Februarii anno 8 *Jacobi* Regis per cur. Canc. dict. Domini Regis apud *Westm.* tunc existen. pro quodam contemptu per eundem *Samuel* in cur. prædict. illat. & perpetrat. ibidem

*Remittitur.*

proinde salvo custodiend. Qui remittitur prisonæ prædict.

De Termino sanctæ *Trinitatis* anno 8 *Jacobi* Regis & per scr. ejusdem rot. 71.

*Samuel Saltonstall* mil. per *Johannem Wilkinfon* Ar. Gardian. prison. de le *Fleet*, virtute brevis Domini Regis de *habeas Corpus* ad subjiciendum recipiendum, &c. ei inde direct. & coram Domino Rege apud *Westm.* duct. cum causa, viz. Quod prædictus *Samuel Saltonstall* commissus fuit prisonæ prædict. 11 die Martii anno Domini 1608. anno Regni Domini

ni

ni *Jacobi* Regis Angliæ 6. virtute cujusdam warr. a Dominis de Privato Concilio dicti Domini Regis tunc seden. apud *Whitehall* commissus fuit etiam idem *Samuel Saltonstall*. mil. prisonæ prædictæ. 12. die Februarii anno 1610. & anno Regni Domini *Jac.* nunc Regis Angliæ &c. 8 per considerationem cur. Canc. dicti Domini Regis apud *Westm.* pro contemptu eidem Cur. ad tunc per prædict. *Samuel* illat. ibidem prout inde salvo custodiend. Et hæc sunt causæ captionis & detentionis prædictæ cujusdam tamen Corpus ad diem & locum infra content. *Remittitur.* parat. habeo prout mihi præcipitur.

## Sr Edward Coke.

**R**esolved upon question, that no Free-man ought to be committed or detained in prison or otherwise restrained by the command of the King, or the Privie Councell, or any other unlesse some cause of the commitment, detainer, or restraint be expressed, for which by Law he ought to be committed, detained, or restrained.

That the Writ of *Habeas Corpus* may not be denied but ought to be granted to every Free-man that is committed, or detained in prison or otherwise restrained, though it be by Command of the King, the Privie Counsel, or any other he praying the same.

That if a Free-man be committed or detained in prison, or otherwise restrained by the Command of the King, or the Privy Counsel, or any other, no cause of such commitment, detainer or restraint being expressed, for which by Law he ought to be committed detained or restrained, and the same returned upon a *Habeas Corpus* granted for the same partie, that then he ought to be delivered or bailed. All this without one negative.

That these Acts of Parliament and these judiciall Presidents in affirmance thereof recited by Colleagues are but declarations of the fundamentall Lawes of this Realm, I shall prove by manifest reasons, legall reasons which are the grounds and Mothers of all Lawes.

First generall reason. The first generall reason is drawn *à re ipsa* from imprisonment, *ex visceribus causæ*, be it close or other imprisonment, which is divided into three parts,

First, No man can be imprisoned at the will and pleasure of any, but he that is bond, and a villain, for that imprisonment at will *Et Tayler lag haut et base are propria quarto modo to* *Vide the writ de nativo habendo.* villaines.

Second, But if Free-men of *England* might be imprisoned at the will and pleasure of the King, by his Command, then were they in worse case then bondmen and villaines, for the Lord of a villain cannot command another to imprison his villain without

7. E. 3. fo. 50. in the new print and 348 in the old. 33 E. 3. 112. Dom. 253. infant imprisoned. Fitz. Herbers fait un note de ceo.

cause



cause, as of disobedience or refusing to serve as is agreed in our books.

Third, Imprisonment is accounted in Law civil death, *perdit domum familiam vicinos patriam*, his house, his family, his wife, his children, his neighbours, his countrey, and to live among wretched and wicked men.

39.H.1.65.&c. If a man be threatned to be killed, he may avoid a Feoffment of lands gifts of goods &c. so it is if he be threatned to be imprisoned he should do the like, for that it is civill death.

Second generall reason. The second generall reason is *à minore ad majus minima pœna corporalis est major qualibet pecuniaria* But the King himself cannot impose a fyne upon any man but it must be done judicially by his Judges, *per Justiciarios in Curia, non per Regem in Camera*, and so it hath been resolved by all the Judges of England.

Bracton fol.  
105. it is called  
*duritia impri-*  
*sonment.*  
2 R. 3. 11.

Third generall reason. The third generall reason is drawn from the number and diversity of remedies which the Law giveth against imprisonment. viz. *breve de homine replegiando, de odio & acia de habeas Corpus* an appeal of imprisonment, & *breve de manuscaptione*. The latter two of these are antiquated, but the writ *de odio & acia* is revived, for that was given by the statute of *Magna Charta*, ca. 26. and therefore though it were repealed by the statute of 28. E. 3. yet it is revived 42.

E. 3. ca. 1. by which it is provided that all statutes made against *Magna Charta* are void. Now the law would never have given so many remedies if the Free-men of England might be imprisoned at free will and pleasure.

Videm. 2.  
ca. 29.

Fourth generall reason. The fourth generall reason is drawn from the extent and universality of the pretended power to imprison, for it should extend not only to the Commons of the Realm and their posterity, but also to the Nobles, and their honourable Progenies, to the Bishops and Clergie and their successours: to all persons of what condition, or sex, or age soever, to all Judges Officers, &c. whose attendance are necessary, &c. without exception of any person.

Fifth generall reason. The fifth is drawn from the indefinitnesse of time, the pretended power being limited to no time may be perpetuall during life.

Sixth generall reason. The sixth *à damno & dedecore* from the losse and dishonour of the English Nation in 2 respects.

First for their valour and prowesse so famous through the whole world.

Secondly, for their industry, for who indeavours to apply himself in any profession either of warre, liberall science, or merchandise, &c. if he be but Tennant at will of his Liberty. And no Tennant at will, will support or improve any thing because he hath no certain estate. And thus it should be both *dedecus* and *damnum* to the English Nation, and it should be no honour to the King to be King of slaves.

Seventh generall reason. The seventh is drawn *ab utili & inutili* for that

that it appeareth by the statute of 36. E. 3. That the execution of the statute of *Magna Charta* 5. E. 3. 25. E. 3. are adjudged in Parliament to be for the profit of the King and of his people. And therefore this pretended power being against the profit of the King and of his people can be no more part of this prerogative.

Rot. Parl. 16. E.  
3. num. 9. & 20.

Eighth generall reason. The eighth generall reason is drawn *à tuto* for it is safe for the King to expresse the cause of the commitment, and dangerous for him to omit it, for if any be committed without expressing the cause, though he escape albeit the truth be it were for treason or felony, yet the escape is neither felony nor treason. But if the cause be expressed to be for suspicion of treason or felony then the escape albeit he be innocent is treason or felony.

1. E. 2. de frang.  
prison. stat. unt.  
pasche 18. E. 3.  
rot. 33. coram  
Rege Bildesons  
case, rot. Parl.  
28. H. 6. nu. 16.  
Acts Apost. cap.  
25. v. the last.

Ninth generall reason. The ninth generall reason is drawn from the authorities 16. H. 6. tit. *Monstrans defaits*, 182. by the whole Court, the King in his presence cannot command one to be arrested, but an action of false imprisonment lieth against him that arresteth, 22. H. 6. 46. *Newton* 1. H. 7. 4. the opinion of *Markham* Chief Justice to E 4. and the reason because the party hath no remedy.

*Forlescue* cap. 18. *proprio ore nullus Regum usus est* &c. to commit any man, &c. 4. *Eliz. Plowd Com.* 236. the common Common Law hath so admeasured the Kings prerogative as he cannot prejudice any man in his inheritance, and the greatest inheritance a man hath, is the Liberty of his person for all other are necessary to it. *Major hereditas venit unicuique nostrum à jure & legibus quam à parentibus* 25. E. 1. ca. 2. *Confirm. Cart.* all judgements given against *Magna Charta* are void.

#### Objections.

Upon Conference with the Lords the objections were made by the Kings Attorney.

First object. That these resolutions of the House were incompatible with a Monarchy that must govern by the state.

*Bracton* Answ. Whereunto it was answered, that *nihil tam proprium est imperii, quam legibus vivere*. And again, *Attribuat Rex legi, quod lex attribuat, &c. viz. dominationem & imperium quia sine lege non potest esse Rex* It can be no more prejudice to the King by reason of matter of state, for if it be for suspicion of treason misprision of treason or felony, it may be by generall words expressed, viz. *pro suspitione proditiōis*.

2 object. To blind those that are committed, one cause must be pretended and another intended, especially when it toucheth matter of state.

Answ. Whereunto it was answered that all dissimulation especially in the course of Justice was to be avoided, and soundnesse of truth to take place, and therefore *David* that was both a King and a Prophet prayed to Almighty God against dissimulation in these words. *Lord send me a sound heart in thy statutes, that I be not ashamed*, where sound in the originall signifieth upright without dissimulation, and shame followeth dissimulation, when the truth is known.

Q

Third



Third object. If a Rebell be attainted in *Ireland*, and his children for safety and for matter of state be kept in the Tower, what shall be returned upon the *Habeas Corpus*?

Whereunto It was answered. First, that their imprisonment might be justified if they could not find good sureties for their good behaviour.

Secondly, It was charity to find them meat drink and apparell that by the Attainder of their father had nothing.

Fourth object. Though his *Majesty* expresseth no cause, yet it must be intended that there was a just cause.

Ans. *De non apparentibus & de non existentibus eadem ratio.*

Fifth object. First, The King in stead of gold or silver may make money currant of any base metall.

Secondly, He may make warres at his pleasure.

Thirdly, He may pardon whom he will.

Fourthly, He may make denizens as many as he will, and these were said to be greater priviledges then this in question.

Ans. To the first it is denyed, that the King may make money currant of base metal, but it ought to be gold or silver.

Secondly, It was answered admitting the King might do it, his losse and charge was more then of his Subjects, both in the case of money and in the case of warre. The pardon was private out of grace, and no man had dammage or loss by it, & so of the making of denizens, the King was only the looser viz. to have single custome where he had double.

Thirdly, it was a *non sequitur* The King may do these things, ergo he may imprison at will.

Your Lordships are advised by them that cannot be daunted by fear, nor misled by affection, reward, or hope of preferment, that is, of the dead.

By ancient and many Acts of Parliament in the point, besides, *Magna Charta* which hath been 30 times confirmed and commanded to be put in execution, wherein the Kings of *England* have thirty times given their Royall assent.

Secondly, Judiciall Presidents per *vividas rationes* manifest and apparant reasons, we in the house of Commons have upon great studie and serious consideration made a grand *manifesto* unanimously *nullo contradicente* concerning this great Liberty of the subject, and have vindicated and recovered the body of this fundamentall Liberty both of your Lordships & of our selves from shadowes which some time of the day are long, sometimes short, and sometimes long again, and therefore no Judges are to be led by them. Your Lordships are involved in the same danger, and therefore *ex congruo & condigno* we desire a conference to the end, your Lordships might make the like declaration as we have done, *Commune periculum commune requirit Auxilium*, and thereupon take such further course as may secure your Lordships and us, and all your and our posterities in enjoying of our ancient undoubted and fundamentall Liberties.

The Argument of Sergeant Bramston upon the  
Habeas corpus.

**M**ay it please your Lordship to hear the return read, or shall I open it?

Chief Justice Hide.

Let it be read.

Mr. Keeling read the return, being the same as that of Sir Thomas Darnell.

May it please your Lordship, I shall humbly move upon this return in the behalf of Sir John Henningham with whom I am of Councill; it is his petition that he may be bailed from his imprisonment, it was but in vain for me to move that to a Court of Law which by Law cannot be granted: and therefore in that regard, that upon his return it will be questioned whether as this return is made, the Gent. may be bailed or not; I shall humbly offer up to your Lordship the case, and some reasons out of mine understanding, arising out of the return it self, to satisfie your Lordship that these Prisoners may and as their case is, ought to be bailed by your Lordship.

The exception that I take to this return, is as well to the matter and substance of the return, as to the manner and legall form thereof; the exceptions that I take to the matter is in severall respects.

That the return is too generall, there is no sufficient cause shewn in speciall or in generall of the commitment of this Gentleman; and as it is insufficient for the cause, so also in the time of the first imprisonment, for howsoever here doth appear a time upon the second warrant from the Lords of the Councill to detain him still in prison, yet by the return no time can appear when he was first imprisoned, though it be necessary it should be shewen, and if that time appear not, there is no cause your Lordship should remand him, and consequently he is to be delivered.

Touching the matter of the return, which is the cause of his imprisonment, It is expressed to be *Per speciale mandatum domini Regis*: This is too generall and uncertain, for that it is not manifest what kind of command this was.

Touching the Legall form of the return, it is not as it ought to be fully and positively the return of the Keeper himself onely, but it comes with a *significavit* or *prout*. that he was committed *Per speciale mandatum domini Regis*, as appeareth by warrant from the Lords of the Councill, not of the King himself, and that is not good in legall form.



For the matter and substance of the return it is not good, because there ought to be a cause of that imprisonment.

This writ is the means, and the onely means that the subject hath in this and such like case to obtain his liberty ; there are other writs by which men are delivered from restraint, as that *de homine replegiando*, but extends not to this cause, for it is particularly excepted in the body of the writ *de manucapione & de cantione admittenda*, but they lie in other cases ; but the writ of *Habeas corpus* is the onely means the subject hath to obtain his liberty, and the end of this writ is to return the cause of the imprisonment, that it may be examined in this Court whether the parties ought to be discharged or not, but that cannot be done upon this return, for the cause of the imprisonment of this Gentleman at first is so farre from appearing particularly by it that there is no cause at all expressed in it.

This writ requires that the cause of the imprisonment should be returned, & if the cause be not specially certified by it, yet should it at the last be shewn in generall, that it may appear to the Judges of the Court, and it must be expressed so farre as that it may appear to be none of those causes for which by the Law of the Kingdome the subject ought not to be imprisoned, and it ought to be expressed that it was by presentment or indictment, and not upon petition or suggestion made to the King and Lords, which is against the statute made in the 25 *Ed. 3. c. 4. 42 E. 3. c. 3.*

By the Statute 25 *Ed. 3. cap. 4.* It is ordained and established, that no man from henceforth shall be taken by petition or suggestion made to the King or his Councell, but by indictment or course of Law ; and accordingly it was enacted, 42 *E. 3. c. 3.* the title of which statute is, None shall be put to answer an accusation made to the King without presentment. Then my Lord, it being so, although the cause should not need to be expressed in such manner as that it may appear to be none of these causes mentioned in the statute, or else the Subject by this return loseth the benefit and advantage of these Laws, which be their birth-right and inheritance ; but in this return there is no cause at all appearing of the first commitment, and therefore it is plain that there is no cause for your Lordship to remand him : but there is no cause you should deliver him, since the writ is to bring the body and the cause of the imprisonment before your Lordship.

But it may be objected, that this writ of *Habeas Corpus* doth not demand the cause of the first commitment, but of the detaining onely ; and so the writ is satisfied by the return, for though it shew no cause of the first commitment, but of detaining onely, yet it declareth a cause why the Gentleman is detained in prison ; this is no answer, nor can give any satisfaction for the reason why the cause is to be returned is for the Subjects liberty, that if it shall appear a good and sufficient cause to your Lordship, then to be remanded ; if your Lordship think and finde it insufficient, he is to be enlarged.

This

This is the end of this writ, and this cannot appear to your Lordship, unlesse the time of the first commitment be expressed in the return. I know that in some cases the time is not materiall, as when the cause of the commitment is (and that so especially) returned, as that the time is not materiall, it is enough to shew the cause without the time, as after a conviction or triall had by Law; But when it is in this manner, that the time is the matter it self: for intend what cause you will of the commitment, yea though for the highest cause of treason, there is no doubt but that upon the return thereof the time of it must appear; for it being before triall and conviction had by Law, it is but an accusation, and he that is onely accused, and the accusation ought by Law to be let to bail.

But I beseech your Lordship to observe the consequence of this Cause. If the Law be that upon this return this Gentleman should be remanded, I will not dispute whether or no, a man may be imprisoned before he be convicted according to the Law: but if this return shall be good, then his imprisonment shall not continue on for a time, but for ever: and the Subjects of this Kingdome may be restrained of their liberties perpetually, and by Law their can be no remedy for the Subject; and therefore this return cannot stand with the Laws of the Realm, or that of *Magna Charta*. Nor with the statute of 28 *Ed. 3. ca. 3.* for if a man be notailable upon this return, they cannot have the benefit of these two Laws, which are the inheritance of the Subject.

If your Lordship shall think this to be a sufficient cause, then it goeth to a perpetuall imprisonment of the subject: for in all those causes which may concern the Kings Subjects, and are appliable to all times and cases, we are not to reflect upon the present time and government, where justice and mercy floweth, but we are to look what may betide us in the time to come, hereafter.

It must be agreed on all sides, that the time of the first commitment doth not appear in this return; but by a latter warrant from the Lords of the Councell, there is a time indeed expressed for the continuing of him in prison, and that appears; but if this shall be a good cause to remand these Gentlemen to prison, they may lie there this seven yeares longer, and seven yeares after them, nay all the dayes of their lives. And if they sue out a writ of *Habeas corpus*, it is but making a new warrant, and they shall be remanded, and shall never have the advantage of the Laws which are the best inheritance of every Subject.

And in *Ed. 6. fol. 36.* the Laws are called the great inheritance of every Subject, and the inheritance of inheritances, without which inheritance we have no inheritance.

These are the exceptions I desire to offer to your Lordship, touching the return, for the insufficiency of the cause returned, and the defect of the time of the first commitment, which should have been expressed.



I will not labour in objections till they be made against me, in regard the statute of *Westminster primo* is so frequent in every mans mouth, that at the Common Law those men that were committed in four cases were not replevifable (*viz.*) those that were taken for the death of a man, or the commandment of the King, or his Justices for the forest; I shall speak something to it, though I intend not to spend much time about it, for it toucheth not this Case we have in question.

For that is concerning a Case of the Common Law, when men are taken by the Kings writs, and not by word of mouth, and it shall be so expounded, as Master *Stamford fol. 73.* yet it is nothing to this Case, for if you will take the true meaning of that statute, it extends not at all to this writ of *Habeas corpus*; for the words are plain, they shall be replevifable by the Common writ, that is, by the writ *de homine replegiando*, directed to the Sheriffe to deliver them if they were baileable, but the Case is above the Sheriffe, and he is not to be Judge in it, whether the cause of the commitment be sufficient or not, as it appears in *Fitz Herbert, de homine replegiando*, and many other places, and not of the very words of the statute, this is clear, for thereby many other causes mentioned, as the death of a man, the commandment of the Justices, &c. In which the statute saith, men are not replevifable; but will a man conceive that the meaning is, that they shall not be bailed at all, but live in perpetuall imprisonment? I think I shall not need to spend time, in that it is so plain, let me but make one instance.

A man is taken *de morte hominis*, he is not baileable by writ, saith this statute, that is, by the common writ, there was a common writ for this Case, and that was called *de odio & acia*, as appeareth. *Bracton. Coron. 34.* this is the writ intended by the statute, which is a common writ, and not a speciall writ; But my Lord as this writ *de odio & acia* was before this statute, so it was afterwards taken away by the statute of 28 *Ed. 3. cap. 9.* But before that statute, this writ did lie in the speciall Case, as is shewn in *Brooks 9th. Reports, Poultrys Case*, and the end of this writ was, that the Subject might not be too long detained in prison, as till the Justices of *Eyre* discharged them, so that the Law intended not that a man should suffer perpetuall imprisonment, for they were very carefull that men should not be kept too long in prison, which is also a Liberty of the Subject; and my Lord, that this Court hath bailed upon a suspicion of high treason, I will offer it to your Lordship, when I shall shew you presidents in these cases of a commitment by the Privy Councill, or by the King himself: But before I offer these presidents unto your Lordship, of which there be many, I shall by your Lordships favour speak a little to the next exception, and that is the matter of the return, which I find to be *per speciale mandatum domini Regis 8.* and what is, that it is by this writ there may be sundry commands by the King, we find a speciall command often in our Books, as in the Statute

statute of *Marlborough* cap. 8. they were imprisoned *Rediff.* shall not be delivered without the speciall command of our Lord the King, and so in *Braeton. De Actionibus*, the last chapter, where it appears that the Kings commandment for imprisonments is by speciall writ, so by writ again men are to be delivered, for in the case of *Rediffs* or *Post Rediffs*, if it shall be removed by a *Certiorare*, is by a speciall writ to deliver parties; so that by this appears that by the Kings commandment to imprison, and to deliver in those cases, is understood this writ, and so it may be in this case which we have heard.

And this return here is a speciall *Mandatum*, it may be understood to be under some of the Kings Seals, 42 *Afs.* and ought to be delivered, and will you make a difference between the Kings command under his seal, and his command by word of mouth; what difference there is, I leave it to your Lordships judgement, but if there be any, it is the more materiall that it should be expressed what manner of command it was, which doth not here appear; and therefore it may be the Kings command by writ, or his command under his Seal, or his command by word of mouth alone.

And if of an higher nature, there is none of these commands, then the other, doubtlesse, it is that by writ, or under seal, for they are of record, and in these the person may be bailed, and why not in this? As to the legall forme, admitting there were substances in the return, yet there wants legall form, for the writ of *Habeas Corpus* is the commandment of the King to the Keeper of the prisons, and thereupon they are to make return both of the body, and of the cause of the commitment, and that cause is to appear of them who are the immediate Officers. And if he doth it by signification from another, that return is defective in Law, and therefore this return cannot be good, for it must be from the Officer himself, and if the cause returned by him be good, it bindes the prisoners.

The warrant of the Lords was but a direction for him, he might have made his return to have been expressly by the Kings commandment, there was a warrant for it, I shall not need to put you cases of it, for it is not enough that he returns that he was certified that the commitment was by the Kings command, but he must of himself return this fact as it was done. And now my Lord I shall offer to your Lordship presidents of divers kindes, upon commitments by the Lords of the Privy Council, upon commitments by the speciall command of the King, and upon commitments both by the King & the Lords together. And howsoever I conceive, which I submit to your Lordship, that our case will not stand upon presidents, but upon the fundamentall Laws and Statutes of this Realm, and though the presidents look the one way or the other, they are to be brought back unto the Laws by which the Kingdome is governed. In the first of *Henry* the eighth, *Rot. Parl.* one *Havison* was  
com.



committed to the *Marshalsey* by the command of the King, and being removed by *Habeas Corpus* into the Court, the cause returned was, that he was committed *per mandatum Domini Regis*, and he was bailed.

In the fortieth of *Elizabeth*, *Thomas Wendon* was committed to the Gatehouse by the commandment of the Queen, and Lords of the Councell, and being removed by an *Habeas Corpus* upon the generall return, and he was bailed.

In 8 *Jacobi*, one *Casar* was committed by the Kings commandment, and this being returned upon his *Habeas Corpus*, upon the examination of this case it doth appear that it was over-ruled that the return should be amended, or else the prisoner should be delivered.

The presidents concerning the commitment by the Lords of the Councell, are in effect the same with these, where the commitment is, by the reason why the cause of the commitment should not be shewn, holds in both cases, and that is the necessity of suit, and therefore Master *Stamford* makes the command of the King, and that of the Lords of the Privy Councell, to be both as one, and to this purpose, if they speak, he speaks, and if he speaks, they speak.

The presidents that we can shew you how the Subject hath been delivered upon commitment by the Lords of the Councell, as in the time of *Henry* the eight, as in the times of Queen *Elizabeth*, Queen *Mary*, are infinite: as in the ninth of *Elizabeth*, *Thomas Lawrence* was committed to the Towre by the Lords of the Councell, and bailed upon an *Habeas Corpus*.

In the 43 of *Elizabeth*, *Calvins* case.

In the third of *Elizabeth*, *Vernons* case.

These were committed for high treason, and yet bailed, for in all these cases there must be a conviction in due time, or a deliverance by Law.

There be divers other presidents that might be shewn to your Lordship. In 12 *Jacobi*, *Miles Renards*. In 12 *Jacobi*, Rot. 155. *Richard Beckwiths* case. In 4 *Jacobi*, Sir *Thomas Monson* was committed for treason to the Towre of *London*, and afterwards was brought hither, and bailed, and since our case stands upon this return, and yet there is no sufficient cause in Law expressed in the return of the detaining this Gentleman; and since these presidents do warrant our proceedings, my humble suit unto this Court is, that the Gentleman Sir *John Henningham*, who hath petitioned his Majesty, that he may have the benefit of the Law, and his Majesty hath signified it, it is his pleasure that justice accord-

according to the Law should be administred at all times in generall to all his Subjects, and particularly to these Gentlemen which is their birth-right: My humble suit to your Lordship is, that these Gentlemen may have the benefit of that Law, and be delivered from their imprisonment.

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*The Argument of Master Noye upon the Habeas corpus.*

May it please your Lordship, I am of Councell with Sir *Walter Earl*, one of the prisoners at the Barre; the return of this writ is as those that have been before, they are much of one tenour, and as you have heard the tenour of that, so this Gentleman coming hither by an *Habeas Corpus*, I will by your Lordships favour read the writ.

*Carolus Dei Gratia &c, Johanni Lylo Milit' Guardian' Prison' nostræ de le Fleet Salut' Præcipimus tibi quod corpus Walteri Earl Milit' in prison' nostra sub custodia tua detent' ut dicit una cum causa detentionis suæ quocunque nomine prædict' Walter' censeat in eadem Habeas Corpus ad subjiciendum & recipiendum ea quæ curia nostra de eo ad tunc & ibidem ordin' conting' in hac parte & hæc nallatenus omit' periculo incumbent' & habeas tibi hoc breve, Test' Hyde, apud Westminster quarto die Novembris, Anno 8.*

*Executio istius brevis patet in quadam schedula huic brevi annexat'.*

*Respons. Johan' Liloe Guardian' Prison' de le Fleet.*

*Ego Johannes Lyloe Mil' Guardian' Prison' domini Regis de le Fleet, Serenissimo Domino Regi, apud Westminster' 8. Post receptionem hujus brevis quod in hac schedula est mentionat', Certifico quod Walter Earl miles, in eodem brevium nominat' detentus est in prisona de le Fleet sub custodia mea prædict' per speciale mandatum domini Regis mihi significatum per Warrantum duorum & aliorum de Privato Concilio per Honorabilissimi dicti Domini Regis, cujus quidem tenor sequitur in hac verba.*

Whereas Sir *Walter Earl* Knight, was heretofore committed to your custody, these are to will and require you still to detain him, letting you know, that both his first commitment, and this direction for the

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conti-



continuance of him in prison, were and are by his Majesties speciall commandment, from *White Hall*, 7 *Novembris*. 1627.

*Thomas Coventree C. S.*

*Henry Manchester.*

*Thomas Suffok.*

*Bridgewater.*

*Kellie.*

*R. Duneln'.*

*Thomas Edmunds.*

*John Cook.*

*Marlborough.*

*Pembroke.*

*Salisbury.*

*Totnes.*

*Grandisson.*

*Guliel' Bath and Wells.*

*Robert Nanton.*

*Richard Weston.*

*Humphrey Mayes.*

To the Guardian of the Fleet or his  
Deputy.

*Et hæc est causa detentionis prædict' Walteri Earl sub custodia mea in Prison' prædict'. Attamen corpus ejusdem Walteri coram Domino Rege ad diem & locum prædictum, post receptionem brevis prædict' parat' habeo prout istud breve in se exiget & requiret.*

*Respon' Johan' Liloe milit' Guardian' Prison' de le Fleet.*

My Lord, the first *Habeas corpus* bears date the 4 of *November*, then there is an *Alias habeas* bears *Teste* after that, and the tenour thereof is a command to the Warden of the Fleet, *quod habeas corpus Walteri Earl coram nobis ad subjiciendum & recipiendum ea qua curia nostra de eo &c. ordin' conting.* And the Warden of the Fleet he certifies as your Lordship have heard; May it please your Lordship, I desire as before was desired for the other Gentlemen, that Sir *Walter Earl* may be also bailed, if there be no other cause of his imprisonment; for if there were a cause certified, and that cause were not sufficient to detain him still in prison, your Lordship would bail him, and if a man should be in worse case, when there is no cause certified at all, that was very hard.

The writ is, that he should bring the prisoner *coram nobis* before the King, the end of that is *ad subjiciendum & recipiendum*; now I conceive that though there be a signification of the Kings pleasure to have this Gentleman imprisoned, yet when the King grants this writ to bring the prisoner hither, *ad subjiciendum & recipiendum*, his pleasure likewise is to have the prisoner let go, if by Law he be not chargeable, or otherwise to detain him still in prison, if the case so require it.

I will put your Lordship in mind of a case, and it was *Pasch. 9. Ed. 3. M. 3.* I will cite by the *placita*, because my Book is not paged as other Books are, it is in the case of a *Cessavit*.

In

In that case there were two things considerable, the one that there was a signification of the Kings pleasure past, and that determined with him: the other, that though there was a signification of the Kings pleasure, before which was, yet there comes after that a writ, and that was another signification of the Kings pleasure, that the prisoner should be brought hither *ad subjiciendum*, to submit himself to punishment, if he have deserved it, or *ad recipiendum*, to receive his enlargement and be delivered, if there be no cause of his imprisonment.

And if upon an *Habeas corpus* a cause of commitment be certified, that cause is to be tried here before your Lordship. But if no cause be shewn, then the proceedings must be *ut curia nostra ad mar' contigerit*, the Court must do that which stands with Law and Justice, and that is to deliver him.

My Lord, I shall be bold to move one word more touching this return: I conceive that every Officer to a Court of Justice must make his return of his own act, or of the act of another, and not what he is certified of by another.

But in this case the Warden of the Fleet doth not certifie himself, of himself, that this Gentleman was commanded to him by the King, but that he was certified by the Lords of the Councill, that it was the Kings pleasure that he should detain him. But in our case the Warden of the Fleet must certifie the immediate cause, and not the cause of the cause, as it doth by this return, *Detentus est sub custodia mea per speciale mandatum Domini Regis mihi significatum per Warrantum duorum de Privato Concilio*; that is not the use in Law, but he ought to return the primary cause, and not the subsequent cause, as in 32 *Edw. 3.* return, *Rex vicecom' 87.* in a writ *De homine replegiando*, against an Abbot, the Sheriffe returns, that he hath sent to the Bayliffe of the Abbot, and he answered him that the party was the Abbots villain, and so he cannot deliver him, that is held an insufficient return, and a new *Alias* was granted, but if the Sheriffe had returned, that the Abbot did certifie him so, it had been good, but he must not return what is certified him by another.

In one of the presidents that hath been noted, as that of *Parker*, 22 *Hen. 8.* there the Guardian of the prison certifies that *Parker detentus est sub custodia mea per mandatum Domini Regis mihi nunciatum per Robertum Pecke*; now our case is by the Nunciation of many, but in Law *majus & minus non variant in spetione*, the certification of one and of many is of the same effect, although in morall understanding there may be a difference.

*Trin. 2. Ed. 3. Rot. 46.* in this Court in 21 *Ed. 3.* in the printed Book there is a piece of it: The Abbot of *Burey* brings a prohibition out of this Court, the Bishop of *Normich* pleadeth in Barre of that *Quod*



*mibi testificatū, quod continetur in Archivis*, that he is excommunicated; there were two exceptions taken to this case in this president, and they are both in one case, the first was, that no case appeareth, why he was excommunicated: there may be causes why he should be excommunicated, and then he should be barred, and there may be causes why the excommunication should not barre him: for it may be the excommunication was for bringing the action, which was the Kings writ, and therefore because there was no cause of the excommunication returned, it was ruled that it was not good. The other reason is that upon the Roll, which is *mibi testificatum*.

Now every man when he will make a certificate to the Court, *Proprium factum suum non alterius significare debet*, he must inform the Court of the immediate act done, and not that such things are told him, or that such things are signified unto him, but that was not done in this case, and therefore it was held insufficient: and so in this case of ours, I conceive the return is insufficient in the form, there is another cause my Lord, for which I conceive this return is not good.

But first I will be bold to inform your Lordship touching the Statute of *Magna Charta* 29. *Nullus liber homo capiatur vel imprisonetur &c. nec super eum mittimus nisi per legale iudicium parium suorum vel per legem terra.*

That in this Statute these words, *in Carcerem* are omitted out of the printed Books: for it should be *nec eum in Carcerem mittimus*. For these words *per legem terra*; what *Lex terra* should be, I will not take upon me to expound, otherwise then I finde them to be expounded by Acts of Parliament; and this is that they are understood to be the proceffe of the Law, sometimes by writ, sometimes by attachment of the person: but whether *speciale mandatum Domini Regis* be intended by that or no, I leave it to your Lordships exposition upon two petitions of the Commons, and answer of the King, in 36 *Ed.* 3. n<sup>o</sup> 9. and n<sup>o</sup> 20.

In the first of them the Commons complain that the great Charter, the Charter of the Forrest, and other Statutes were broken, and they desire that for the good of himself and of his people, they might be kept and put in execution, and that they might not be infringed by making an arrest by speciall command or otherwise: and the answer was, that the assent of the Lords established and ordained, that the said Charter and other Statutes should be put in execution according to the petition, and that is without any disturbance by arrest by speciall command or otherwise, for it was granted, as it was petitioned.

In the same year, for they were very carefull of this matter, and it was necessary it should be so, for it was then an usuall thing to take men by writs *quibusdam de causis*, and many of these words caused many Acts of Parliament: and it may be some of these writs may be shewn, and I say in the same year they complained that men were imprisoned  
by

by speciall command, and without indictment or other legall course of Law, and they desired that thing may not be done upon men by speciall command against the great Charter.

The King makes answer that he is well pleased therewith: that was the first answer; and for the future he hath added farther, if any man be grieved let him complain, and right shall be done unto him. This my Lord is an explanation of the great Charter, as also the Statute of 37 *Ed. 3. ch. 18.* is a commentary upon it, that men should not be committed upon suggestion made to the King, without due proofs of Law against them, and so it is enacted twice in one year.

We find more printed Books, as in *Henry the sixth, Minus de factis, Fitz. 182.* which is a strong case: under favour in an action of Trespasse for cutting down trees: the defendant saith, that the place where the trees are cut, is parcell of the Manor of *B*, whereof the King is seised in fee, and that the King did command him to cut them: and the opinion of the Court was, that this was no good plea, without shewing the specialty of the command, and they said, if the King command me to arrest a man, and I arrest him, he shall have an action of false imprisonment against me, although it were done in the Kings presence.

In 1 *Joh. cap. 7. fol. 46.* it is in print, and there we leave it.

*Hufsey* Chief Justice saith, that Sir *John Markham* told King *Edward* the fourth, that he could not arrest a man upon suspition of felony or treason, as any of his Subjects might, because if he should wrong a man by such arrest, the parties could have no remedy against him, if any man shall stand upon it; here is a signification of the Kings pleasure, not to have the cause of the commitment examined, he hath here another signification of his pleasure by writ, whereby the party is brought hither *ad subjiciendum & recipiendum*, that he hath made your Lordship Judge of that, that should be objected against this Gentleman, and either to punish him, or to deliver him, and if here be no cause shewn, it is to be intended that the party is to be delivered, and that it is the Kings pleasure it should be so, and the writ is a sufficient warrant for the doing of it, there being no cause shewn of the imprisonment; and now my Lord I will speak a word to the writ of *de homine replegiando*, and no other writ, for that was the common writ, and the four causes expressed in that Statute, to wit, the death of a man, the command of the King or his Justices, or Forrest, were excepted in that writ before that Statute made, as appears *Bracton 133.* so that the writ was at the Common Law before that Statute.

And it appears by our Books, that if a man be brought hither by an *Habeas corpus*, though he were imprisoned *De morte hominis*, as in the 21 of *Edward* the fourth 7. *Winkfield* was bailed here, this Court bailed him, for he was brought hither *ad subjiciendum & recipiendum*,



and not to lie in prison God knows how long; and if the Statute should be expounded otherwise, there were no bailing men outlawed or breakers of prisons, for they are not within this Statute, and yet this Court doth it at pleasure.

But plainly by the Statute it self, it appears that it meant only to the common writ, for the preamble recites, that the Sheriffs and other, have taken and kept in prison persons detected of felony, and let out to plevin such as were not reparable to grieve the one party, and to the gain of the other; and forasmuch as before this time it was not determined what prisoners were reparable, which not, but onely in certain cases were expressed, therefore it is ordained, &c.

Now this is no more but for direction of the keepers of the prisons, for it leaves the matter to the discretion of the Judges, whetherailable or no, not of the Judges, for when the Statute hath declared who are replevable, who are not, as men outlawed have abjured the Realm: Proves such as be taken in the manner, breakers of prisons, burners of houses, makers of false money, counterfeiting of the Kings Seal, and the like, it is then ordained, that if the Sheriff or any other, let any go at large by surety, that is not reparable, if he be Sheriff, Constable, or any other that hath the keeping of prisons, and thereof be attainted, he shall lose his office and fee for ever, so that it extends to the common Goalers and keepers of prisons, to direct them in what cases they shall let men to bail, and in what cases not: and that they shall not be Judges to whom to let to replevin, and whom to keep in prison, but it extends not to the Judges, for if the makers of the Statute had meant them in it, they should have put a pain upon them also.

So then, I conclude upon these under your Lordships favour, that as this case is, there should have been a cause of the commitment expressed, for these Gentlemen are brought hither by writ *ad subjiciendum*, if they be charged, and *ad recipiendum*, if they be not charged, and therefore in regard there is no charge against them whereupon they should be detained in prison any longer; we desire that they may be bailed or discharged by your Lordship.

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*The Argument of Master Selden upon the  
Habeas corpus.*

My Lords, I am of Councill with Sir *Edmond Hampden*, his case is the same with the other two Gentlemen, I cannot hope to say much after that that hath been said, yet if it shall please your Lordship, I shall remember you of so much as is befallen my lot: Sir *Edmond Hampden* is brought hither by a writ of *Habeas corpus*, and the keeper of the Gatehouse

house hath returned upon the writ, that Sir *Edmond Hampden* is detained in prison *per speciale mandatum Domini Regis, mihi significatum per Warrantum duorum Privati Concilii dicti domini Regis*, and then he recites the warrants of the Lords of the Councell, which is, that they do will and require him to detain this Gentleman still in prison, letting him know that his first imprisonment, &c.

May it please your Lordship, I shall humbly move you that this Gentleman may also be bailed, for under favour my Lord, there is no cause in the return, why he should be any farther imprisoned and restrained of his liberty.

My Lord, I shall say something to the form of the writ, and of the return, but very little to them both, because there is a very little left for me to say.

My Lord, to the form, I say it expresseth nothing of the first caption, and therefore it is insufficient, I will adde one reason as hath been said: the *Habeas Corpus* hath onely these words, *quod habeas corpus ejus unicum causa detentionis & non captionis*: But my Lord, because in all imprisonment there is a cause of caption and detention, the caption is to be answered as well as the detention.

I have seen many writs of this nature, and on them the caption is returned, that they might see the time of the caption, and thereby know whether the party should be delivered or no, and that in regard of the length of his imprisonment.

The next exception I took to the form is; that there is much incertainty in it, so that no man can tell when the writ came to the keeper of the prison, whether before the return or after, for it appears not when the Kings command was, for the commitment or the signification of the Councell came to him: It is true, that it appears that the warrant was dated the seventh of *November*, but when it came to the keeper of the prison that appears not at all; and therefore as for want of mentioning the same time of the caption, so for not expressing the same time when this warrant came, I think the return is faulty in form and void.

And for apparent contradiction also, the return is insufficient, for that part of the return which is before the warrant, it is said *quod detentus est per speciale mandatum domini Regis*, the warrant of the Lords of the Councell; the very syllables of that warrant are, that the Lords of the Councell do will and require him still to detain him, which is contrary to the first part of the return.

Besides my Lord, the Lords themselves say in another place and passage of the warrant, that the King commanded them to commit him,  
and



and so it is their commitment, so that upon the whole matter there appears to be a clear contradiction in the return, and there being a contradiction in the return, it is void.

Now my Lord, I will speak a word or two to the matter of the return, and that is touching the imprisonment, *per speciale mandatum domini Regis*, by the Lords of the Councell without any cause expressed, and admitting of any or either of both of these to be the return: I think that by the constant and settled Laws of this kingdome, without which we have nothing, no man can be justly imprisoned be either of them, without a cause of the commitment expressed in the return. My Lord, in both the last Arguments the statutes have been mentioned and fully expressed, yet I will adde a little to that which hath been said.

The statute of *Magna Charta* cap. 29. that statute if it were fully executed as it ought to be, every man would enjoy his liberty better then he doth.

The Law saith expressly, no Free-man shall be imprisoned without due proccesse of the Law; out of the very body of this Act of Parliament, besides the explanation of other statutes, it appears, *Nullus liber homo capiatur vel imprisonetur nisi per legem terra*. My Lord, I know these words *legem terra*, do leave the question where it was if the interpretation of the Statute were not. But I think under your Lordships favour, there it must be intended by due course of Law to be either by presentment or by indictment.

My Lords, if the meaning of these words *Per legem terra* were but as we use to say, according to the lawes, which leaves the matter very uncertain: and *per speciale mandatum*, &c. be within the meaning of these words, according to the law, then this Act had done nothing. The Act is, No Free-man shall be imprisoned but by the law of the land; if you will understand these words, *per legem terra*, in the first sense, this statute will extend to Villains as well as to Free-men, for if I imprison another man, Villain, the Villain may have an action of false imprisonment. But the Lords and the King (for then they both had Villains) might imprison them, and the Villain could have no remedy; but these words in the statute *per legem terra*, were to the Free-man, which ought not to be imprisoned, but by due proccesse of law, and unlesse the interpretation shall be this, the Free-man shall have no priviledge above the Villain.

So that I conceive my Lord, these words *per legem terra*, must be here so interpreted, as in 42 *Eliz.* the Bill is worth the observing, it reciteth that divers persons without any writ or presentment were cast into prison, &c. that it might be enacted that it should not be so done hereafter; the answere there is, that this is an Article of the great Charter, this should

should be granted, so that it seemes the statute is not taken to be an explanation of that of *Magna Charta*, but the very words of the statute of *Magna Charta*.

I will conclude with a little observation upon these words, *nec super eum mittimus*, which words of themselves signifie not so much, a man cannot finde any fit sense for them.

But my Lord, in the seventh year of King *John*, there was a great Charter by which this statute in the ninth of *Henry* the third, whereby we are now regulated, was framed, and there the words are, *nec eum in Carcerem mittimus*, we will not commit him to prison; that is, the King himself will not: and to justifie this, there is a story of that time in *Matthew Paris*, and in that Book this Charter of King *John* is set down at large, which Book is very authentique, and there it is entred, and in the ninth of *Henry* the third, he saith, that the statute was renewed in the same words with the Charter of King *John*; and my Lord, he might know it better then others, for he was the Kings Chronologer in those times: and therefore my Lord, since there be so many reasons, and so many presidents, and so many statutes, which declare that no Free-man whatsoever ought to be imprisoned, but according to the laws of the land; and that the liberty of the subject is the highest inheritance that he hath; my humble request is, that according to the ancient laws and priviledges of this Realm, this Gentleman my Client may be bailed.

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*The Argument of Master Calthrop upon the  
Habeas corpus.*

Sir *John Corbet* being brought to the Kings Bench Bar with Sir *Edmond Hampden*, Sir *Walter Earl*, and Sir *John Henningham*, who were also brought thither by severall writs of *Habeas Corpus*, with the same return, I being assigned by the Court of Kings Bench, upon a petition delivered to be of Councell with Sir *John Corbet*, did move that Sir *John Corbet* might be discharged of his imprisonment, and put in bail, for I did conceive that the return of this *Habeas corpus* was insufficient, both in the matter of the return, and in the manner of the return, and so there ought not to be a longer detaining of Sir *John Corbet* in prison: for as unto the manner of the return it is not laid down precisely that Sir *John Corbet* is detained in prison by the speciall commandment of the King, signified by the warrant of the Lords of the Councell, the which is not a direct affirmation that he is detained by the speciall command of the King, but that the Lords of the Council by their warrant have signified unto him that he was committed and still detained by the speciall command of the King.

And howsoever the Lords of the Councell had signified that he was detained by the commandment of the King, yet it may be he was not  
S detained



detained by the commandment of the King, for their signification of the same by warrant may be untrue, and the warrant of the Lords of the Councell that is returned *in hac verba*, importeth that the keeper of the Gatehouse rather took upon him to return, that was signified unto him by the warrant of the Lords of the Councell, that Sir John Corbet was committed and detained by the speciall commandment of the King, because if the keeper had taken upon him to affirm it upon his return, then needed he not to have returned the warrants of the Lords of the Councell, and the warrant it self sheweth that he had onely his information from the Lords of the Councell; for their warrant is to let the keeper know, that both the first commitment, and this direction for the continuing of him in prison, were and are by his Majesties speciall commandment, and I do not see as this return is made, that an accord upon the case can lie upon the keeper of the Gatehouse, if Sr. John Corbet was not committed nor detained by the special commandment of the King, so long as the warrant of the Lords of the Councell be returned as it was made, because he doth return the same as the significavit of the Lords by their warrant, Register 65. the writ of Excommunication *Capiend'* goeth, *Rex vicecom' Lincoln S. significavit nob' venerabilis Pater Henricus Lincolnienfis Episcopus per Literas suas Patentes quod R. suus Parochial' propter suam manifestā contumaciā autoritate ipsius Episc ordin' excom' est nec se vult per censuram Ecclesiasticam justiciar' &c. tibi precipimus quod predict' R. per corpus suum secundum consuetud' Anglia justic' &c.* and yet no man will say that there is an information of the King, that R. is excommunicated, but onely that the Bishop of Lincoln had signified unto him that R. was excommunicated: and in *Fitz. Nat. Br. 663.* and Register 65. it appears that the form of the writ of Excommunication *deliberand'* is, *Rex Vicecom' London Salut'. Cum Thom' Jay allutar' London qui nuper ad denuntiavit. venerabil' Patris Archiep' Eborum pro contumaciis suis ratione contractus in civitate nostra Eborum habuit ut dicebat, tanquam excom' & claves Ecclesie contemneret per corp' suum secundum consuetud' Anglia per te justic' precepimus, donec &c. esset satisfact' eix' Archiepiscopo, ad satisfaciendum Deo & sancte ecclesie, sufficientem exposuit cautionem, per quod eidem Archiepiscopo offic. Archdiac London. mutue vicissitudin' obtentu scripsit ut ipsum absolvat ab excom' senten' memorata sicut idem Archiepiscopus per Literas suas Patentes nob' significavit, Tibi precipimus quod pred. Thom' cum tibi constare poterit ipsum ab excom' predict' per predict' Official' absolvi à Prison' qua detinetur si ea occasione & non alia detineat' in eadem sine dilatione deliberari fac'* And yet it cannot be said, that although the King recited in his writ that the Archbishop had signified unto him that he had written unto the Official of the Archdeacon, that the King said that the Archbishop had written, for he doth not affirm so much precisely, but onely referreth himself unto the Certificate of the Archbishop.

*Plowden 122 Buckley and Rivers case*, it is put that if a man will bring an action of debt upon an obligation, and declare that it appears by the obligation

obligation that the defendant stood bound to the plaintiffe in twenty pounds, the which he hath not paid, this declaration is not good, inso-much as it is not alledged by matter in fact, that he was bound unto him in twenty pound, but the deed is alledged by recitall onely 21. Ed. 4. 43.

*Plowden Com' 126. & 143. Browning and Beestons case.*

The Abbot of *Waltingham* being appointed collector of a Disme granted unto the King in discharge of himself, in the Exchequer, pleadeth, *Quo inter recordat' Ter Pasc. anno 25. domini Regis Edwardi 1. inter alia continetur quod R. 2. had granted unto the predecessors of the said Abbot,* that he nor any of his successors should be any collectors of any dismes to be granted afterwards, and it was adjudged that this plea was ill.

For the saying [it was contained among the Records,] it is no precise affirmation that the King had granted to his predecessors, that they should be discharged of the collecting any dismes, but it is onely an allegation by way of recitall, and not by precise affirmation, the plea may not be good.

2 & 3 Mar. Dier. 117. & 118. the plaintiffes reply in barre of all pleadeth, that *John Abbot of W.* was seised of his lands in right of his Church, and so seised by the assent of the tenant by indenture, 14 Hen. 4. testat' quod pradiet' Abbat' & convent' demiserunt & tradiderunt, unto the plaintiffe, and ruled, that this form of pleading was ill, inso-much as it was not alledged by precise affirmation, *quod demiserunt, sed indentura testatur, quod demiserunt*, which is not sufficient, inso-much as it is onely an allegation by way of recitall, that the Indenture doth witness, and the same Indenture may witness so much, and yet not be a demise.

And if in pleading there must be direct affirmation of the matter alledged, then *a fortiore* in a return, which must be more precise then in pleading, and so by all the cases I have formerly touched, it appeareth that this return is no expresse affirmation of the keeper of the Gate-house, that Sir *John Corbet* is detained in prison by the speciall commandment of the King, but onely an affirmation of the Lords of the Councell, who had signified unto him that his detainment in prison was by speciall command of the King.

The return which ought to be certain, and punctuall, and affirmative, and not by way of information out of another mans mouth, may not be good, as appeareth by the severall books of our law.

23 Ed. 3. *Rex vs'* 181. upon a *Homine replegiando*, against the Abbot of C. the Sheriffe returneth that he had sent to the Bailiffe of the Abbot that answered him that he was the villain of the Abbot, by which he might not make deliverance, and a *Sicut alias* was awarded,



for this return was insufficient, inſomuch that he had returned the answer of the Bailiffe of the Abbot where he ought to have returned the answer of the Abbot himſelf out of his own mouth.

*Trin. 22. Ed. 2. Rot. 46. parent. vill' & Burg. Evesque de Norwich, repl' 68. Nat. Br. Case 34. Fitz. Nat. Br. 65. & 34. Ed. 3. Excom' 19.* the case appeareth to be ſuch in a trespasse, the defendant pleadeth, the plaintiffe is excommunicate, and ſheweth forth the letter of the Biſhop of *Lincoln*, witnessing that for divers contumacies, &c. and because he had certified no excommunic' done by himſelf, but by another, the letter of excommunication was annulled, for the Biſhop ought to have certified his own act, and not the act of another.

*Hilarii 21 Hen. 8. Rot. 37.* it appeareth by the return of an *Habeas corpus*, that *John Parker* was committed to priſon for ſecurity of the peace, and for ſuſpicion of felony, as *per mandatum Domini Regis nunciatum, per Robertum Peck de Cliffords Inne*, and upon his return *John Parker* was bailed, for the return *Commiſſ. fuit per ſpeciale mandatum domini Regis, nunciatum per Robertum Peck* was not good, inſomuch that it was not a direct return that he was committed *per mandatum Domini Regis*.

And for the firſt point, I conclude that this return is inſufficient in form, inſomuch that it doth not make a precise and direct return, that he was committed and detained by the ſpeciall command of the King, but onely as he was ſignified by the warrant of the Lords of the Council, which will not ſerve the turn; and upon the book of *9 Hen. 6. 44.* the return of the cauſe of a mans imprisonment ought to be precise and direct upon the *Habeas corpus*, inſomuch as thereby to be able to judge of the cauſe, whether it be ſufficient or not, for there may not any doubt be taken to the return, be it true or falſe, but the Court is to accept the ſame as true: and if it be falſe, the party muſt take his remedy by action upon the caſe.

And as concerning the matter of the return, it will reſt upon theſe parts

Firſt, whether the return be that he is detained in priſon by ſpeciall commandment of our Lord the King, be good or not, without ſhewing the nature of the commandment, or the cauſe whereupon the commitment is grounded in the return.

The ſecond is, whether the time of the firſt commitment by the commandment of the King, not appearing to the Court, is ſufficient to detain him in priſon.

Thirdly, whether the imprisonment of the ſubjects without cauſe ſhewed, but onely by the commandment of the King, be warrantable by the laws and ſtatutes of this Realm.

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As unto the first part, I find by the books of our law, that commandments of the King are of severall natures, by some of which the imprisonment of a mans body is utterly unlawfull: and by others of them, although the imprisonment may be lawfull, yet the continuance of him without bail or mainprise, will be utterly unlawfull.

There is a verball command of the King which is by word of mouth of the Kings onely, and such commandment by the King, by the books of our law will not be sufficient either to imprison a man or to continue him in prison, 16. 6. *Monstrans de fait si*, upon an action of trespasse brought for cutting of trees, the defendant pleadeth that the place where he cut them is parcell of the Manor of D. whereof the King is seised in fee, and the King commanded him to cut the trees, and the opinion of the Court there is, that the plea in barre was ill, because he did not shew any speciall commandment of the King, and there it is agreed by the whole Court, that if the King commandeth one to arrest another, and the party commanded did arrest the other, an action of trespasse or false imprisonment is maintainable against the party that arrested him, although it were done in the presence of the King, 39 H. 6. 17. where one justifieth the seisure of the goods of a person that is outlawed by the commandment of the King, such a party being no Officer may not in an action brought against him have any aid of the King; for such a commandment given to one that is not an Officer, will not any wayes avail him that is to justifie himself by the return of that commandment.

37 Hen. 6. 10. If the king give me a thing and I take the same by his commandment by word of mouth, it is not justified by law, nothing may passe without matter of Record.

10 Hen. 7. 7. & 17. 18. it is agreed that Justices may command one to arrest another that is in their view or presence, but not one that is out of their view or presence.

And Keble 10 Hen. 7. 13. said, that where one is arrested by a parroll command in their view or presence, it is fitting that a record may be made of it, infomuch that without such a record there can hardly be a justification in another Term.

Secondly, there is a commandment of the King by his Commission, which according unto *Calvins* case in the seventh Report, it is called by him *breve mandatum non remediabile*, and by virtue of such a commandment the King may neither seise the goods of his subject, nor imprison his body, as it is resolved in 42 Ass. pl. 5. where it is agreed by all the justices that a Commission to take a mans goods, or imprison his body without indictment or suit of the party, or other due proceffe, is against the Law.



Thirdly, there is a commandment of the King which is grounded upon a suggestion made to the King or to his Councell ; and if a man be committed to prison by such a suggestion by commandment of the King, it is unlawfull, and not warranted by the Law of the Realm.

The 25 of *Edward* the third, *cap. 4. de Provisoriis*, whereas it is contained in the great Charter of the *Franchises of England*, that none shall be imprisoned or arrested of his Free-hold or of his Franchises, nor of his free customes, but by the Law of the land.

It is awarded, consented and established, that from hence forth none shall be taken by petition or suggestion made to our Sovereign Lord the King, or to his Councell, untill it be by indictment or presentment of his good and lawfull neighbours, where such deeds are done in due manner, or by proceffe made by writ originall at the common law, nor of his free-hold, unlesse he be duely brought in, and answer, and forejudged of the same by way of Law, and if any thing be done against the same, it shall be redressed and holden for nought.

37 *Ed. 3. cap. 10.* although it be contained in the great Charter, that no man be taken or imprisoned, or put out of his freehold, without due proceffe of the law ; neverthelesse divers persons make false suggestions to the King himself, as well for malice as otherwise, whereof the King is often grieved, and divers of the Realm put in great damages contrary to the form of the same Statute.

Wherefore it is ordained, that all they that make such suggestions be sent with their suggestions to the Chancellour or Treasurer, and they and every of them find sureties to pursue their suggestions, and endure the same pain that the other should have had ; if in case that his suggestion be found untrue, and that then proceffe of the law be made against them without being taken or imprisoned against the form of the same Charter, and other statutes.

So that it appears by these severall statutes, that such commandments of the King as are grounded upon suggestion, either made to himself or to his Councell, for the imprisonment of a man, are against the law.

Fourthly, I find that there is a commandment of the King which is made under his hand, with his signet, for in the fourth and the fifth of *Philip* and *Mary*, *Dier. 162.* where the statute of 1 *Rich. 2. cap. 11.* restraineth the Warden of the Fleet for letting any man at large that is in upon judgement at the suit of any man, except it be by writ or other commandment of the King ; It was doubted whether the Queen by letter under her hand and privy signet, doth give commandment to the Warden of the Fleet to suffer a man that is there in execution to go about his businesse, or the affaires of the Queen : whether this be a warrantable command or not within the Statute: and the Law hath alwayes been conceived upon that book, that such a commandment is not warrantable by Law, and if such a command will not serve the turn, to give unto a man his liberty which the ~~Law~~ <sup>Lord</sup> favoureth, and had the counte-

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nance of an Act of Parliament for the doing of it, then I conceive it should be a more strong case, the King should not have power by his commandment to imprison a man, without due proceſſe of the Law, and reſtrain him of his liberty when there had been ſo many Acts of Parliament made for the liberty of the ſubjects.

Fifthly, I do find that there is the commandment of the King which is by his writ under the Great Seal, or the ſeal of the Court out of which it iſſueth, *Regiſt. f. 69. & 70.* in the writ *de cautione admittenda*, I find the words, *mandatum Regis* expounded to be *breve Regis*, for the writ goeth: *Rex vic' Salutem. Cum nuper ad requiſitionem S. de Iſle Canonici Lincol. venerabilis Patris H. Lincoln. Episcopi ipſo in remotis agente Vicarii general. per Literas ſuas patentes nobis ſignificantis Nicho. B. dict. Lincoln. Dioc. propter manifestam contumaciam Authoritate ipſius Episcopi Ordinar. excommunicat. eſſe nec ſi velle &c. vobis praceperimus quod praſat. &c. ſatisfactum ex parte ipſius N. qui virtute mandati noſtri praedict. per vos Capt. & in Priſon. noſtra de Newgate detent. exiſtit, &c. nos nolentes quod praſat. N. per breve noſtrum praedict. via pracludatur &c. proſequi poſſit in forma Juris maxim' &c. integer eſſe debeat, vobis pracipimus quod ſcire &c. quod ſit &c. quare praedict. N. à Priſona praedict. deliberari non debeat. Rex Juſticiar. ſuis de Banco ſalut. Cum nos nuper ad ſignificationem S. de Iſle &c. uſque ibi excommunicat. exiſtiſſe nec ſe velle &c. eſſet ſatisfactum ex parte ipſius N. virtute mandati noſtri praedict. capt. & in Priſona noſtra de Newgate tunc detenti, &c. & nolentes eo praetextu praſato N. per breve noſtrum praedict. via pracludat. quo minus appellac. ſua negotium &c. proceſſerat. & appellant ſtatut. &c. per breve noſtrum praceperimus praſat. vic. quod ſcire facerent. &c. ſignific. & conſult. & circumſpect. in Placitis per breve praedict. coram vobis pendentibus procedere valeatis ſecundum legem & conſuetudinem Regni noſtri.*

*Stamf. 72.5 E. 3. c. 8. 1 E. c. 3. 9.* ſaith, that every *Capias* in a perſonall action is a Commandment of the King, for it is *Pracipimus tibi quod capias* &c. and yet the defendant as there it is ſaid is repleviſable by the Common Law, 7 R. 20. a. *Calvins* caſe, ſaith that there are two kind of writs, viz. *brevia mandatoria* & *remedialia*, & *brevia mandatoria* & *non remedialia*: *brevia mandatoria* & *remedialia*, are writs of Right, Formedon, &c. debts, treſpaſſes, and ſhortly all writs reall and perſonall whereby the party wronged is to recover ſomewhat, and to be remedied for that wrong which is done unto him.

Sixthly, I do finde by our books of Law, and by the Register that this ſpeciall *mandatum domini Regis*, is expounded to be his writ, and that the Law taketh no notice of any other *ſpeciale mandatum* then by this writ; the which being ſo when the return is made, that he is imprisoned and detained in priſon by the ſpeciall commandment of the King, how can the Court adjudge upon this return, that Sir *John Corbet* ought to be kept in priſon, and not to be bailed, when the nature of the ſpeciall commandment is not ſet forth in the return, whereby it may



may appear unto the Court that he is notailable. In *Bracton*. c. 12. 112. you shall see a writ reciting. *Præcipimus tibi quod non implacites nec implacitari permittas talem de libero tenemento suo in tali villa sine speciali præcepto nostro vel Capitalis Justiciar' nostri.*

And the reason of it there is given, *quia nemo de libero tenemento sine brevi sive libello conventionali nisi gratis voluerit respondebit.* So as the exception of speciall commandment by the very book, appeareth to be *breve sive libellus conventionalis*, *Regist.* 271. the writ of Manucaption goeth in this manner: *Rex vic. Salut. Cum nuper assignaverimus dilectos & fideles nostros A. B. & C. D. ad inquisitiones de forstallariis & transgressionibus contra formam statuti dudum apud Winton. editi in com. tuo faciend. & ad illos quos inde culpabiles invenirent. capiend. & in Prisona nostra salvo custod. faciend. donec aliud inde præcepissemus quod C. D. & E. pro hujusmodi forstallamentis & transgressionibus unde coram præfat. A. B. & C. indict. fuerint, capt. & in Prisona de E. detent. exist. à qua deliberari non possunt, sine mandato nostro speciali, Nos volentes eisdem C. D. & E. gratiam in hac parte facere specialem, tibi præcipimus. quod si prædict. C. D. & E. occasione prædict. & non alia in Prisona prædict. detineantur, & pro transgressionibus illis secundum legem & consuetudinem Regni nostri Angliæ replegiabiles existunt &c. tunc impos C. D. & E. à Prisona prædict. si ea occasione & non alia detineantur in eadem interim deliberari facias per manucapt. supradict. & habeas ibi tunc coram præfat. Justiciar. nomina manucapt. illorum & hoc breve.*

And the exposition of this *speciale mandatum domini Regis*, mentioned in the writ, is expounded to be *breve domini Regis*, and thereupon is this writ directed unto the Sheriffe for the delivery of them.

And so for the branch of the first part: I conclude, that the speciall command of the King without shewing the nature of the commandment of the Kings, is too generall, and therefore insufficient: for he ought to have returned the nature of the commandment of the King, whereby the Court might have adjudged upon it, whether it were such a commandment that the imprisonment of Sir John Corbet be lawfull or not, and whether it were such a commandment of the King, that although the imprisonment were lawfull at the first, yet he might be bailed by Law.

And as for the generall return of *speciale mandatum domini Regis*, without shewing the cause of the imprisonment either speciall or generall, I hold that for that cause also the return is insufficient.

First, in regard of the *Habeas corpus*, which is the commandment of the King onely, made the 15 of November.

According to the *Teste* of the writ commanding the keeper of the Gatehouse to have the body of Sir. John Corbet, *una cum causa detensio-*

*nis & ad subjiciendum & recipiendum ea qua curia nostra de eo ad tunc ibid. ordinar. contingat.* So as the commandment of the writ being to shew the cause of his detaining in prison, the keeper of the gatehouse doth not give a full answer unto the writ, unlesse the cause of the detainment in prison be returned, and the Court doth not know how to giue their judgement upon him, either for his imprisonment, or for his discharge, according to the purport of the writ, when there is not a cause returned, and forasmuch as upon an excommengement certified, it hath been adjudged oftentimes that Certificates were insufficient where the cause of the commitment hath not been certified, that the Court might adjudge whether the Ecclesiasticall Judges who pronounced the excommunication, had power over the original cause according to the book of 14 Hen. 4. 14. 8. Rep. 68. Trollops case, & 20 Ed. 3. Excommengement 9.

So upon an *Habeas corpus* in this Court, where a man hath been committed by the Chancellour of *England* by the Councell of *England*, *Marches of Wales*, Warden of the Stanneries, High Commission, Admiralty, Dutchy, Court of request, Commission of Sewers or Bankrupts, it hath severall times been adjudged that the return was insufficient where the particular cause of imprisonment hath not been shewen, to the intent that it might appear that those that committed him had jurisdiction over the cause, otherwise he ought to be discharged by the Law, and I spare to recite particular causes in every kind of these, because there are so many presidents of them in severall ages of every King of this Realm: and it is an infallible maxime of the Law, That as the Court of the Kings Bench, and Judges ought not to deny an *Habeas corpus* unto any prisoner that shall demand the same by whomsoever he be committed, so ought the cause of his imprisonment to be shewn upon the return, so that the Court may adjudge of the cause whether the cause of the imprisonment be lawfull or not: and because I will not trouble the Court with so many presidents but such as shall suit with the cause in question, I will onely produce and vouch such presidents, whereas the party was committed either by the commandment of the King, or otherwise by the commandment of the Privy Councell, which *Stamford fol. 72.* tearmeth the mouth of the King, such acts as are done by the Privy Councell, being as Acts done by the King himself.

And in all these causes you shall find that there is a cause returned as well as a *speciale mandatum domini Regis &c.* or *mandatum Privati Consilii domini Regis*, whereby the Court may adjudge of the cause, and bail them if they shall see cause.

In the eighth of *Henry* the seventh, upon return of an *Habeas corpus* awarded for the body of one *Roger Sherry*, it appeareth that he was committed by the Mayor of *Windsor* for suspicion of felony, and *ad sententiam ipsius Regis pro quibusdam felonitis & transgressionibus ac per mandatum domini Regis*; 21 Hen. the seventh upon the return of an *Habeas corpus*



sent for the body of *Hugh Pain*, it appeared that he was committed to prison, *per mandatum dominorum Privati Concilii domini Regis pro suspicione felonie.*

*Primo Henrici Octavi, Rot. 9.* upon the return of an *Habeas corpus* sent for the body of one *Thomas Harrison* and others, it appears that they were committed to the Earl of *Shrewsbury* being Marshall of the household, *Per mandatum Domini Regis, & pro suspicione felonie; & pro homicidio facto super Mare.*

3 & 4 *Philip. & Maria*, upon a return of an *Habeas corpus* sent for the body of one *Peter Man*, it appeareth that he was committed *pro suspicione felonie, ac per mandatum Domini Regis & Regina.*

4 & 5 *Philippi & Maria*, upon the return of an *Habeas corpus* sent for the body of one *Thomas Newport*, it appeared that he was committed to the Tower, *pro suspicione contrafact. moneta per privatum Concilium domini Regis & Regina.*

33 *Elizabetha* upon the return of an *Habeas corpus* for the body of one *Lawrence Brown*; it appeareth that he was committed *per mandatum Privati Concilii domine Reginae pro diversis causis ipsam Reginam tangen. ac etiam pro suspicione proditiōis.*

So as by all these presidents it appeareth where the return is either *Per mandatum domini Regis*, or *Per mandatum dominorum Privati Concilii domini Regis*; there is also a cause over and besides the *mandatum* returned, as unto that which may be objected, that *per mandatum domini Regis*, or *Privati Concilii domini Regis* is a good return of his imprisonment, I answer.

First, that there is a cause, for it is not to be presumed that the King or Councill would commit one to prison without some offence, and therefore this *mandatum* being occasioned by the offence or fault, the offence or fault must be the cause, and not the command of the King or Councill which is occasioned by the cause.

Secondly, it appears that the jurisdiction of the Privy Councill is a limited jurisdiction, for they have no power in all causes, their power being restrained in certain causes by severall Acts of Parliament, as it appeareth by the statute of 20 *Edward* the third, c. 11. 25 *Ed.* the third c. 1. stat. 4. the private petition in Parliament permitted in the 1 of *R.* 2. where the Commons petition that the Privie Councill might not make any Ordinance against the Common Law, Customes or Statutes of the Realm; the fourth of *Henry* the fourth, ca. 3. 13 *Hen.* the fourth, 7. 31 *Henry* the sixth, and their jurisdictions being a limited jurisdiction, the cause and grounds of their commitment ought to appear, whereby it may appear if the Lords of the Councill did commit him for such a cause as was within their jurisdiction: for if they did command me to be committed to prison for a cause whereof they had not jurisdiction, the Court ought to discharge me of this imprisonment,

sonment, and howsoever the King is *Vicarius Dei in terra*, yet *Bracton. cap. 8. fol. 107.* saith, *quod nihil aliud potest Rex in terris cum sit Minister Dei & Vicarius, quam solum quod de jure potest. nec obstat, quod dicitur quod Principi placet, legis habet vigorem, quia sequitur in fine legis cum lege Regia qua de ejus imperio lata est, id est non quicquid de voluntate Regis temere presumptum est, sed animo condendi Fura, sed quod consilio Magistratum suorum, Rege author. praestant & habita super hoc deliberatione & tract. rect. fuer. definit. Potestat. itaque sua juris est, & non injuria.* The which being so, then also it ought to appear upon what cause the King committeth one to prison, whereby the Judges which are indifferent between the King and his Subjects, may judge whether his commitment be against the Laws and Statutes of this Realm or not.

Thirdly, it is to be observed, that the Kings command by his Writ of *Habeas corpus* is since the commandment of the King for his commitment, and this being the latter commandment, ought to be obeyed; wherefore that commanding a return of the body *cum causa detentionis*, there must be a return of some other cause then *Per mandatum domini Regis*, the same commandment being before the return of the Writ.

*Pasch. 9. E. 3. pl. 30. fol. 56.* upon a Writ of *Cessavit* brought in the County of *Northumberland*, the Defendants plead, That by reason the Country being destroyed by Warres with the Scots, King *Edward* the second gave command that no Writ of *Cessavit* should be brought during the Warres with *Scotland*, and that the King had sent his Writ to surcease the Plea, and he averreth that the Warres with *Scotland* did continue.

*Hearle* that giveth the Rule saith, That we have command by the King that now is, to hold this Plea, wherefore we will not surcease for any writ of the King that is dead; and so upon all these reasons and precedents formerly alledged, I conclude, that the return that Sir *John Corbet* was committed and detained in prison, *Per speciale mandatum domini Regis*, without shewing the nature of the commandment by which the Court may judge whether the commandment be of such a nature as he ought to be detained in prison, and that without shewing the cause upon which the commandment of the King is grounded, is not good. As unto the second part, which is, Whether the time of the commitment by the return of the Writ, not appearing unto the Court, the Court ought to detain him in prison or no?

I conceive that he ought not to be continued in prison, admitting that the first commitment by the command of the King were lawfull, yet when he hath continued in prison by such reasonable time as may be  
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thought fit for that offence for which he is committed, he ought to be brought to answer, and not to continue still in prison without being brought to answer.

For it appears by the Books of our Laws, that liberty is a thing so favoured by the Law, that the Law will not suffer the continuance of a man in prison for any longer time then of necessity it must; and therefore the Law will neither suffer the party, Sheriffs or judges to continue a man in prison by their power and their pleasure, but doth speed the delivery of a man out of prison, with as reasonable expedition as may be.

And upon this reason it is resolved in 1 & 2 *El. Dyer* 175. & 8 *E. d. 4.* 13. That howsoever the Law alloweth that there may be no term between the rest of an originall Writ and the return of the same, where there is onely a summons, and no imprisonment of the body, yet it will not allow that there shall be a term between the rest of a Writ of *Capias*, and the return of the same, where the body of a man is to be imprisoned, insomuch that it will give no way that the party shall have no power to continue the body of a man imprisoned any longer time then needs must. 39 *E. 3.* 7. 10 *H. 7.* 11. 6 *E. 4.* 69. 11 *E. 4.* 9. 48 *E. 3.* 1. 17 *E. 3.* 1 & 2 *Hen. 7.*

*Kellawaies* Reports do all agree, that if a *Capias* shall be awarded against a man for the apprehending of his body, and the Sheriffe will return the *Capias*, that is awarded against the party, a *non est inventus*, or that *languidus est in prisoa*, yet the Law will allow the party against whom it is awarded for the avoiding of his corporall pennance and dures of imprisonment, to appear *gratis*, and for to answer.

For the Law will not allow the Sheriffe by his false return to keep one in prison longer then needs must, 38 *Aff. pl.* 22. *Brooks* imprisonment 100, saith. That it was determined in Parliament that a man is not to be detained in prison after he hath made tender of his fine for his imprisonment, therefore I desire your Lordship that Sir *John Corbet* may not be kept longer in durance, but be discharged according to the Law.

*The substance of the Objections made by Mr. Attorney, General before a Committee of both Houses, to the Argument that was made by the House of Commons, at the first conference with the Lords out of Presidents of Record, and Resolutions of Judges in former times, touching the Liberty of the person of every Freeman, and the Answers and Replies then presently made by the House of Commons to these Objections.*

**A**fter the first conference which was desired by the Lords, and had by a Committee of both houses in the painted Chamber, touching the Reasons, Laws, *Acts of Parliament* and Presidents concerning the Liberty of the person of every Freeman, Mr. Attorney General being heard before the Committee of both houses as it was assented by the house of Commons, that he might be, before they went up to the conference, after some preamble made, wherein he declined the answering all Reasons of Law, and *Acts of Parliament*, came onely to the Presidents used in the Argument before delivered, and so endeavoured to weaken the strength of them that had been brought in behalf of the subjects, & to shew that some other were directly contrary to the Law comprehended in the Resolutions of the house of Commons, touching the bailing of Prisoners, returned upon the writ of *Habeas Corpus* to be committed by the special command of the King, or the Council, without any cause shewed, for which by Law they ought to be committed. And the course which was taken (it pleased the Committee of both houses to allow of) was that Mr. Attorney should make his Objections to every particuler President, and that the Gentlemen appointed, and trusted herein by the house of Commons by several Replies, should satisfy the Lords touching the Objections made by him, against, or upon every particuler, as the order of the Presidents should lead them, he began with the first 12. Presidents that were used by the house of Commons at the conference delivered by them, to prove that Prisoners returned to stand so Committed, were delivered upon bail by the Court of Kings Bench: The first was that of *Bildstones* case in the 18. *Edw. 3. Rot. 33. Rex.*

To this he Objected, First, that in the return of him into the Court, it did not appear that this *Bildstone* was committed by the Kings command; and Secondly that in the Record it did appear also that he had been committed for suspicion of counterfaising the great Seal, and so by consequence was bailable by the Law, in regard there appeared a Cause why he was committed, in which case it was granted by him (as indeed it was plain and agreed of all hands) that the Prisoner is bailable though committed by Command of the King, and he said that this part of the Record, by which it appeared he had been committed for suspicion of treason was not observed to the Lords in the Argument before used, and he said also to the Lords;

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that there were three several kinds of Records, by which the full truth of every award, or bailing upon a *Habeas Corpus* is known. First the remembrance Roll, wherein the award is given, Secondly the file of the writt and the return, and Thirdly, the Scrueet or Scruct *finium* wherein the baile is entered, and that onely the remembrance Roll of this Case was to be found, and that if the other two of it were extant, he doubted not but that it would appear also, that upon the return it self, the Cause of the Commitment had been expressed, and so he concluded, that this proved not for the house of Commons, touching the Matter of bail, where a Prisoner was committed by the Kings special command without Cause shewed.

To this Objection the reply was, First, that it was plain that Bildstone was committed by the Kings expresse Command. For so the very words of the Writt are to the Constable of the Tower, *quod eum tenendum Custodia facias*, &c. then which nothing can more fully express a Commitment by the Kings command. Secondly, how ever it be true, that in the latter part of the Record it doth appear, that Bildstone had been Committed for suspicion of Treason, yet if the times of the proceeding, expressed in the Record, were observed, it would be plain that the Objection was of no force: for this one ground, both in this Case and all the rest, is infallible, and never to be doubted of in the Law, That Justices of every Court adjudge of the force and strength of a return out of the body of it self onely, and as therein it appears. Now in *Easter term* in the 18. *Edward 3.* he was returned and brought before them, as Committed onely by the Writt, wherein noe Cause is expressed, and the Leivetenant & the Constable of the Tower that brought him into the Court saies, that he had no other warrant to detain him *Nisi breve predictum*, wherein there was no mention of any Cause; & the Court thereupon adjudged, that *breve predictum* for that speciall command, was not sufficient *causa* to detain him in prison, and thereupon he is by judgment of the Court in *Easter term* let to Mainprize. But that part of the Record wherein it appears, that he had indeed been committed for suspicion of Treason, is of *Trinity term* following, when the King, after the letting of him to Mainprize, sent to the Judges that they should discharge his Mainprize, because no man prosecuted him. And at that time it appears (but not before) that he had been in for suspicion of Treason; so that he was returned to stand committed by the Kings special command onely, without Cause shewed, in *Easter term*, And then by judgment of the Court let to Mainprize (which to this purpose is but the same with bail, though otherwise it differ); And in the term following upon another occasion the Court knew, that he had been committed for suspicion of Treason, which hath no relation at all to the letting of him to Mainprize, nor to the judgement of the Court then given, when they did not, nor could possible know any Cause, for which the King had committed him. And it was said in behalf of the house of Commons,  
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that they had not indeed in the Argument expressly used this latter part of *Bildstones* Case, because it being onely of *Trinity* term following, could not concern the reason of an Award given by the Court in *Easter* term next before; yet notwithstanding that they had most faithfully, at the time of their Argument, delivered into the Lords (as indeed they had a perfect copy at large of the whole Record of this Case; as they had done also of all other presidents whatsoever cited by them; in so much as in truth there was not one president of Record of either side, the copy whereof they had not delivered in likewise, nor did Mr. *Attorney* mention any one besides those that were so delivered in by them. And as touching those 3. kinds of Records, the remembrance Roll, the return and file of the Writt, and the Scrueets; it, was answered by the gentlemen imployed by the house of Commons, that it was true, that the Scrueet and return of this Case of *Bildstone* was not to be found, but that did not lessen the weight of the president, because always in the Award or Judgment drawn up in the remembrance Roll, the Cause (whatsoever it be) when any is shewed, upon the return is always expressed, as it appears clearly by the constant Entries of the *Kings-Bench* Court: so that if any Cause had appeared plainly in that part of the Roll which belongs to *Easter* term, wherein the Judgment was given, but the return of the commitment by the *Kings* command without Cause shewed, and the Judgment of the Court, that the Prisoner was to be let to Mainprize, appears therein onely, and so notwithstanding any Objection made by Mr. *Attorney*, the Cause was maintained to be a clear proof among many others, touching the resolution of the house of Commons.

To the second of these 12. which is *Parkers* Case in the 22. *H. 8. Rot. 37.* his Objections were two, First, that it is true that he was returned to be committed *Per mandatum domini Regis*; but it appeared that this command, was certified to the Shreiffs of *London* by one *Robert Peck* gentleman, and that in regard, that the command came no otherwise, the return was held insufficient, and that therefore he was bailed. Secondly, that it appears also in the Record that he was committed *pro suspicione fellonia ac per mandatum domini Regis*, so that in regard that the command, that in the expression of the causes of his commitment, suspicion of felony preceeds the command of the *King*, therefore it must be intended that the Court tooke the Cause why the *King* committed him to be of less moment then felony, and therefore bailed him, For he Objected, that even the house of Commons themselves, in some Arguments used by them, touching the interpretation of the statute of *Westminster* the first, *cap. 15.* about this point had affirmed, that in enumeration of particulars, those of greatest nature were first mentioned, and that it was supposed, that such as followed were usually of less nature or moment.

But the reply was to the first Objection, that the addition of



the certefying of the Kings command by Robert Peck altered not the Case, First because the Sheriffs in their Return took notice of the command as what they were assured of; and then howsoever it came to them, it was of equal force as if it had been mentioned without reference to Peck. Secondly, as divers Patents pass the great Seal by writ of privy Seal, and are subscribed *Per breve de privato sigillo*; so diverse *per ipsum Regem*, are so subscribed; and oftentimes in the Roll of former times, to the words *per ipsum Regem*, are added *nunciante A. B.* So that the Kings command generally, and the Kings command related or certified by such a man, is to this purpose of like nature. Thirdly, in the late great Case of *Habeas Corpus*, where the Return of the commitment was *Per speciale mandatum Domini Regis mihi significatum per Dominos de privato Consilio*; the Court of Kings-Bench did agree, that it was the same, and of like force as if *mihi significatum &c.* had not followed, and that those words were void; According whereunto here also, *Per mandatum Dom. Regis nunciatum per Robert Peck*, had been wholly omitted, and void likewise. And in truth in that late Case, this Case of *Parker* was cited both at the *Barr* and *Bench*: and at the *Bench* it was interpreted by the Judges no otherwise, then if it had been onely *per mandatum Domini Regis* in place of it: but the Objection there was made of another kinde, as was delivered in the first Argument, made out of presidents in the behalf of the house of *Commons*. Therefore to the second Objection touching the course of Enumeration of the Causes in the Return, it was said, that howsoever in some *Acts of Parliament*, and else where in the solemn expressions used in the Law, things of greater nature preceded and the less follow; yet in this Case the contrary was most plain, for in the Return it appears that there were three Causes for detaining the Prisoners: Surety of the peace, Suspicion of Fellony, and the Kings command: and Surety of the peace is first mentioned, which is plainly less then Fellony. And therefore it is plain, if any force of Argument be taken from this enumeration, that the contrary to that which Mr. *Attorney* inferred is to be concluded; that is, that as Fellony is a greater Cause then Surety of the peace, so the matter whereupon the Kings command was grounded, was greater then Fellony. But in truth this kinde of Argument holds neither way here, and whatsoever the Cause were why the King committed him, it was impossible for the Court to know it: and it also might be of very high moment in matter of state, and yet of farr less nature then Fellony. All which shews, that this president hath his full force also, according as it was first used in Argument by the house of *Commons*.

To the third of these, which is *Binckes Case* in the 35. H. 8. Rot. 33. the Objection was, that there was a Cause expressed, *pro suspicione fellonie*: and though *pro aliis causis illos moventibus*, were added in the Return; yet because in the course of enumeration, the  
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general name of *aliis* comming after particulars, includes things of less nature then the particuler doth, therefore in this Case suspicion of felony being the first, the other Causes afterwards generally mentioned must be intended of less nature, for which the Prisoner wasailable, because he wasailable for the greater, which was suspicion of felony. Hereunto it was replied, that the Argument of enumeration in these Cases is of no moment, as is next before shewed: and that although it were of any moment, yet any Case, though less then felony, might be of very great consequence in matter of state, which is pretended usually upon general Returns of command without cause shewed; and it is most plain, that the Court could not possible know the reasons why the Prisoner here was committed, and yet they bailed him, without looking further after any unknown thing under that title of Matter of state, which might as well have been in this Case as in any other whatsoever.

To the 4. of these, which is *Overton's Case* in 2. & 3. *Phet. M. Rot.* 58. and to the 5. which is *Newports Case* P. & M. 4. & 5. *Rot.* 45. onely these Objections were said over again by Mr. *Attorney*, which are mentioned in the Argument made out of presidents in behalf of the house of Commons at the first conference, and in the same Argument are fully and clearly satisfied, as they were in like manner now again.

To the 6. of these, which was *Lawrence his Case* M. 9. *EliZ. Rot.* 35. and the 7. which is *Constables* P. 9. *EliZ. Rot.* 68. the same Objections onely were likewise said over again by Mr. *Attorney*, that are mentioned, and clearly and fully answered in the Argument made at the first conference out of presidents in behalf of the house of Commons; the force of the Objection being onely, that it appeared in the Margent of the Roll, that the word *Pardon* was written: but it is plain that the word there hath no reference at all to the reason why they were bailed, nor could it have reference to the Cause why they were committed, in regard the Cause why they were committed is utterly unknown and was not shewed.

To the 8. of these Presidents which was *Brownings Case* P. 20. *EliZ. Rot.* 72. It was said by Mr. *Attorney* that he was bailed by a letter from the Lords of the Council, directed to the Judges of the Court; but being asked for that letter, or any Testimony of it, he could produce none at all; but he said he thought the Testimony of it was burnt among many other things of the Council-table at the burning of the banquetting house.

To the 9. being *Harecourts Case* H. 40. *EliZ. Rot.* 62. the self same Objection was made by him, but no warrant was shewed to maintain his Objection.

To the 10. which is *Catesbyes Case* in *vacatione Hill.* 43. *EliZ.* he said that it was by direction of a privy Seal from the *Queen*; and to that purpose he shewed the Seal of 43. *EliZ.* which is at large



among the Transcripts of the Records concerning bails taken in Cases where the King or the Lords assented. But it was replied, that the privy seal made onely for some particular Gentlemen mentioned in it, and for none other, as indeed appears in it: and then he said, that it was likely that *Catesby* here had a privy seal in his behalf, because those other had so; which was all the force of his Objection.

To the 11. of these, which is *Beckwiths Case in Hill. 12. Jacobi Rot. 153.* he said that the Lords of the council sent a letter to the Court of *Kings-Bench* to bail him. And indeed he produced a letter, which could not by any means be found when the Arguments were made at the first conference: and this letter, and a copy of an obscure Report made by a young student (which was brought to another purpose, as is hereafter shewed) were the onely things written of any kinde that Mr. *Attorney* produced, besides the particulars shewed by the house of Commons at the first conference. To this it was replied, that the letter was of no moment, being onely a direction to the *Chief Justice*, and no Matter of record, nor any way concerning the rest of the *Judges*: And besides, either the Prisoner wasailable by the Law, or notailable: ifailable by the Law, then was he to be bailed without any such letter; if notailable by the Law, then plainly the Judges could not have bailed him upon the letter, without breach of their oath, which is, *that they are to do Justice according to the Law, without having respect to any command whatsoever*: so that letter in this Case, or the like in any other Case, is for point of Law to no purpose, nor hath any weight at all by way of Objection against what the Record and the Judgment of the Court shews us.

To the 12. and last of these, which is *Sir Thomas Monsons Case in the 14. Jacobi. Rot. 147.* the same Objection was said over by him, which was mentioned and clearly answered in the Argument; and that one ground which is infallible, *That the Judgment upon a return is to be made onely out of what appears in the body of the return it self*, was again insisted upon in this Case, as it was also in most of the rest. And indeed that alone which is most clear Law, fully satisfies almost all kinds of Objections, that have been made to any of these presidents, which thus rightly understood, are many ample Testimonies of the Judgments of the Court of *Kings-Bench*, touching this great point, in the several ages and raignes of the several *Princes* under which they fell.

After his Objections to the 12. and the Replies and satisfactions given to those Objections, he came next to those wherein the Assent of the King and privy Council appears to have been upon the enlargement: but he made not to any of those any other kinde of Objections, then such as are mentioned and clearly answered (as they were now again) in the Argument made at the first conference. And for so much as concerns Letters of assent or direction, the same was here  
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said again by way of Reply to him, as is before said touching the letter in *Beckwithes* case.

After these were dispatched, he came to urge the eight *Presidents*, which seemed to make for the other side against the resolution of the House of Commons: which eight were used, and Coppies of them also were given in to the Lords at the first conference.

Of these eight the first 4. were urged by him, as being of one kinde; the difference of them onely being such, that, save onely in the names of Prisons and of Persons, they are but the self same.

The force of these four he objected thus; that *Richard Everard* (for the purpose) in the first of them, which is 5.H.7.Rot.18. *Roger Cherry*: in the second of them, which is 8.H.7.Rot.12. *Christofer Burton*: in the third of them, which is 9.H.7.Rot.14. and *George Urswick* in the fourth of them, which is 19.H.7.Rot.33. were returned into the *Kings-bench* upon several Writs of *Habeas corpus*, to have been committed and detained in the several Prisons whence they came *per mandatum Domini Regis*, & that upon that return they were committed to the Marshall of the *Kings-bench*; and that however it had been objected against those Presidents, that this kinde of commitment was by the course of that Court, alwayes done before the bayling of the Prisoner. Yet that it did not appear that they were bayled.

The Reply to this Objection was, That by constant course of *Kings-bench*, whosoever came in upon *Habeas Corpus*, or otherwise upon any Writ in that Court, cannot be bayled untill he be first committed to the Marshall of that Court; and that thence it was, that all those 4. were committed to the Marshall, as appears by the entry *Qui committitur Marefchallo*, &c. which is the usual entry in such a case, and that the Clerks of that Court acknowledge this course and entry to be most constant. So that all the inference that can be made out of these four, is, but, that four Prisoners being brought, from several Prisons by *Habeas Corpus* into the *King-bench*, and return'd to stand committed *per mandatum Domini Regis*, were so far from being remanded by the Law, that in all these four cases, they were partly first taken from the several Prisons, wherein they had been detained, by such a general command (which could not have been, if they had not been adjudged in every one of the cases to have been baylable by the Court) and that this commitment of them to the Marshall of the *Kings-bench* was the first step towards the bayling of them, as in all other cases. But that it appears not, that either they ever demaunded to be bayled, or that they were able to finde sufficient bayl: And if they did not the one, or could not do the other, it may follow indeed that they were not bayled. But this commitment to the *Kings-bench* being the first step to the bayling of them, (as by the constant course it is) shews most plainly that they were baylable by the Law, which is the onely thing in question. So that although these 4. Presidents were ranked among them, that may seem to make against the resolution of  
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the House of Commons, which was done, both because they have this small colour in them for the other side, to any man that is acquainted with the nature and reasons of the entries, and courses of the Court of *Kings-bench*, and also all or some of them had been used in the late great case in the *Kings-bench*, as Presidents that made against the *Liberty* claimed by the subject; yet in truth, all 4. of them do fully prove their resolution, that is, they plainly shew that the Court of *Kings-bench* in every of them resolved, that the Prisoners so committed were baylable, otherwise they had been remaunded, and not committed to the Marshall of the *Kings-bench*. And this was the Answer to the Objection made by Mr. Attorney upon those 4. Presidents, being all of the time of King Henry the seventh.

The fifth of these 8. being *Edward Pages* case, in 7. H. 8. Rot. 23. Mr. Attorney objected thus, He said that *Edward Page* was committed to the *Marshal-sea* of the household, *per mandatum Domini Regis ibidem salvo custodiendum, &c. Qui Committitur Marefcallo, &c. Hospitii Domini Regis*: by which it appeareth, as he said, that the Court remaunded him to the Prison of the *Marshal-sea* of the household: and he said, that whereas it had been objected at the first conference, that there was some mistaking in the entry; he conceived indeed that there was a mistaking, but it was that the Clerk had entred *Committitur* for *remittitur*; and that it should have been *Qui remittitur Marefcallo hospitii Domini Regis*: for when ever they remaunded the Prisoner, *Remittitur*, and not *Committitur* should be entered. And that mistaking being so rectified and understood, he conceived it was a direct president against the resolution of the House of Commons.

To this it was answered by the Gentlemen of the House of Commons, That there was no doubt indeed, but that a mistaking was in the entry by the Clerk, but that the mistaking was quite of another nature. The addition of those words, *hospitii Domini Regis*, was the mistaking, & the entry should have been, *qui committitur Marefcallo, &c.* only; that is, he was committed to the Marshall of the *Kings-Bench*; & so indeed the force of this President should be but just the same with the first fower: But the ignorance of the Clerk that entred it, and knew not to distinguish between the Marshall of the household and the Marshall of the *Kings-bench*, was the cause of the addition of these words *hospitii Domini Regis*.

And to confirm fully this kinde of interpretation of that president, and of the mistaking of it, it was observed by the Gentlemen of the House of Commons, that there is in the Margin of the Roll an infallible Character that justifies as much. For by the course of that Court, whensoever a Prisoner is committed to the Marshall of the *Kings-bench* and not remaunded, the word *Marefcallo* is written in the Margin by *Marr.* turned up; and that is never written there, but when the meaning and sence of the Entry is, that the Prisoner is committed to the Prison of the same Court. Now in this case *Marr.* in the Mar-

Margin is likewise written: which most clearly shows that the truth of the Case was, that this *Page* was committed to the Marshall of the *Kings-bench* and not remaunded, which if it had been, neither could the entry have been *Committitur*, nor should the Margin of the Roll have *Marescallo* written in it.

And thus they have answered Mr. *Attorneys* objection touching this President, and concluded that now, besides the first four of the 8. they had another, and so 5. to prove that a Prisoner committed *per mandatum Domini Regis*, generally was baylable by the judgement of the Court, however it appears in these particulars that they were not bayled; which perhaps they were not, either because they prayed it not, or because they could not finde sufficient bayl.

The 6. of these Presidents, being that case of *Thomas Cesars* in the 8. *Jacobi Regis. Rot. 99.* Mr. *Attorney* objected it thus; That *Cesar* being committed *per mandatum Domini Regis* to the *Marshal-see* of the household, was returned upon *Habeas Corpus* to be so committed, and therefore detained in Prison, and that the entry is, *Qui committitur prisona Marescal. predict.* by which it appears clearly that he was remaunded to the same Prison from whence he came.

To this the Gentlemen of the House of Commons gave this answer: They said, that the usual entire of a *Remittitur*, when it is to shew that the Court by way of judgement, or award upon resolution, or debate remaunds the Prisoner, is, *remittitur quousque, &c.* which is, *Remittitur quousque secundum legem delibatus fuerit*: but when they advise, or give way to the Keeper of the Prison to amend his return, or the like, then the entry is onely *remittitur* generally, or *remittitur prisona predict.* But it was indeed affirmed by Mr. *Keeling*, a Clark of experience in that Court, that the entry of a *remittitur* generally, or *remittitur prisona predicta* was indifferently used for the same, that is, *remittitur quousque, &c.* Yet it was expressly shewed by the Gentlemen of the House of Commons, that there was sometimes a difference, and that so it might well be in this case. For in the last of these eight Presidents, which is *Saltonstalls* case, they observed that *remittitur prisona predicta* is often used, and in that use it is plain that it is twice used onely for a remaunding, during the time that the Court gave leave to the Warden of the Fleet to amend his return; which shews plainly, that though sometimes *remittitur* generally, and *remittitur quousque, &c.* may mean the same, yet sometimes it doth not. And that in this case of *Cesar* it doth not mean any other, but onely so much as it doth twice in that of *Saltonstalls* case, was proved also by a rule of the Court, which was cited out of the rule book of the Court of *Kings-bench*, by which rule the Court expressly ordered, that unless the Steward and Marshall of the household did sufficiently return the Writ of *Habeas Corpus* for *Cesar*, that he should be discharged. The words of the rule are, *Nisi predicti senescallus & Marescallus hospitii Domini Regis sufficienter returnaverint breve de Habeas*



*Corpus Tho. Cesar die Mercurij proxima post quindenam sancti Martini, de prisona exonerabitur.* And this was the opinion of the Court, that the Court was so far from remaunding him upon the return, that they resolved, that unless some better return were made, the Prisoner should be discharged of his first imprisonment, though it appeared to them out of the body of the return (upon which they were onely to judge) that he was committed *per mandatum Domini Regis* onely: And the rule not onely shews the opinion of the Court then to have been agreeable with the resolution of the House of Commons, but also proves that *Remittitur* generally, or *Remittitur prisona predicta* doth not always imply or remaunding upon judgment or debate. And this answer was given to this of *Cesars* Case, that is the sixt of this Number.

The seventh is the Case of *James Demetrius*. It was 12 *Facobi Rot.* 153. Mr *Attorney* objected that this *Demetrius* and divers others being Brewers, were committed *per consilium Domini Regis* to the *Marshal-see* of the houshold, and that upon the commitment so generally returned they were remaunded, and that the Entry was *immediate remittitur prefato Marefcallo hospitii predicti*; where he observed that *immediate* shews that the Judges of that time were so resolved of this Question, that they remaunded them partly, as men that well knew what the Law was herein.

Here unto the Gentlemen of the House of Commons gave these answers. First, that the *Remittitur* in this Case is but as the other in *Cesars*, and so proves nothing against them. Secondly, that *immediate* being added to it, shews plainly that it was done without debate, or any argument or consideration had of it, which makes the authority of the presidents to be of no force in point of Law; for Judgments and Awards given upon deliberation onely and debate, are Proofs and Arguments of weight, and not any sudden Act of the Court without debate or deliberation. And the Entry of *immediate* being proposed to Mr. *Keeling*, it was confirmed by him, that by that Entry it appears by this course, that the remaunding of him was the self same day he was brought, which as it was said by the Gentlemen of the House of Commons, might be at the rising of the Court, or upon advisement, and the like. And this answer was given to this president of the Brewers.

The last of the 8, which Mr. *Attorney* objected is *Saltonstals* Case in the 13. *Facobi Regis*. He was committed *per mandatum Dominorum Regis de privato Consilio*: and being returned by the Warden of the Fleet to be so, *remittitur prisona predicta*, and in the 13. *Fac.* in the same year *remittitur* generally in the Roll: and these two make but one Case, and are as one president.

To this the Gentlemen of the House of Commons answered, That it is true, the Rolls have such Entries of *remittitur* in them generally, but that proves nothing upon the reason before used by them in  
*Cesars*

*Cesars* Case. But also *Saltonstall* was committed for another cause besides *per mandatum Dominorum Consilii*, for a contempt against an order in *Chauncery*, and that was in the return also. And besides, the Court as it appears in the Record, gave several days to the Warden of the *Fleet* to mend his return; which they would not have done, if they had conceived it sufficient, because that which is sufficient needs no amendment.

To this Mr. *Attorney* replied, that they gave him a day to amend his return, in respect of that part thereof that concerned the order in *Chancery*, and not in respect of that which was *per mandas. Concilij*.

But the gentlemen of the house of Commons answered, That it appears not any where, nor indeed is it likely at all, nor can be so reasonably understood, because if the other return *per mandatum Concilij* had been sufficient by it self, it appears fully that the Court conceived the return to be insufficient.

And so the gentlemen of the Commons house concluded, that they had a great number of presidents besides the Acts of *Parliament*, and reasons of Common Law, agreeable to their resolution, and that there was not one president at all that made against them, but indeed, that almost all that were brought, as well against them as for them (if rightly understood) made fully to the maintenance of their resolution; and that there was not one example or president of a *Remittitur* in any kinde upon this point, before that of *Cesars* Case, which is before cleared with the rest, and is but of late time, and of no moment against the resolution of the house of Commons.

And thus for so much as concerned the presidents of Record, the first day of the conference desired by the Lords ended.

The next day they desired another conference which the house of Commons; at which it pleased the Committee of both houses to hear Mr. *Attorney* again, to make what Objection he would against other parts of the Arguments formerly delivered by the house of Commons. He then Objected against the Acts of *Parliament* and against the reasons of Law: and his Objections to these parts were answered, as appears in the answers by order given into the house of Commons by the gentlemen that made them. He Objected also upon the second day against that second kinde of presidents, which are resolutions of Judges in former times, and not of Records, and brought also some other Testimonies of opinions of Judges in former times touching this point.

First, for that resolution of all the Judges in *England* in 34. of Queen *Eliz.* mentioned and read in the Arguments made at the first conference, he said, That it was directly against the resolution of the House of Commons, and observed the words of it to be in one place, that Persons so committed by the King or the Council may not be delivered by any of the Courts, &c. and in another, that if



the Cause were expressed either in generality, or speciality, it was sufficient: and he said that the expressing of a cause in generality, was to shew the *Kings*, or Councils Command. And to this purpose he read the whole words of that resolution of the Judges. Then he Objected also that in a report of one *Ruswells* Case in the *Kings-bench*, in the 13. *Fac.* he found, that the opinion of some Judges of that Court (Sr. *Edward Coke* being then Chief Justice and one of them) was, that a Prisoner committed *per mandatum Domini Regis*, or *privati Consilii*, without cause shewed, and so returned, could not be bayled, because it might be matter of State, or *Arcanum Imperii*, for which he stood committed. And to this also he added an opinion that he found in a Journal of the House of Commons of the 13. *Fac.* wherein Sr. *Edward Coke* speaking to a Bill preferred for the explanation of *Magna Charta* touching imprisonment, said in the House, That a Prisoner so committed could not be enlarged by the Law, because it might be Matter of State for which he was committed. And among these Objections of other nature also, he spake of the confidence that was shewed in behalf of the House of Commons; & he said, that it was not confidence could add any thing to the determination of the question; but if it could, that he had as much reason for the other side against the resolution of the House, grounding himself upon the force of his Objections, which (as he conceived) had so weakned the Argument of the Commons House, that notwithstanding any thing yet Objected, they were upon clear reason confident of the truth of their first resolution, grounded upon so just examination and deliberation taken by them. And it was observed to the Lords also, that their confidence herein was of another nature, and far greater weight then any confidence that could be expressed by M. *Attorney*, or whomsoever else, being of his Majesties Council learned.

To which purpose the Lords were desired to take into their Memory the difference between the present quality of the Gentlemen that spake in behalf of the House of Commons, and of the *Kings* learned Council in their speaking there, howsoever accidentally they were both men of the same profession. For the *Kings* Council spake as Council perpetually retained by Fee, and if they made glosses and what advantageous Interpretations soever, for their own part they did but what belonged to their place and quality, as M. *Attorney* had done: But the Gentlemen that spake in behalf of the House of Commons, came there bound on the one side by the trust reposed in them by their Countrey that sent them, and on the other bound also by an Oath taken by every of them before they sit in the House, to maintain and defend the rights and prerogatives of the Crown. So that even in the point of confidence alone, that of them that spake as retained Council by perpetual Fee, and might by their place, being permitted to speak, say what they would; and that of them that spake as bound to nothing but truth, but by such a trust and such an Oath, were

were no way to be so compared, or Counterpoised, as if the one of them were of no more weight then the other.

And then the Objections before mentioned were also answered. For that of the resolution of all the Judges of *England* in 34. *Eli*. It was shewed plainly, it agreed with the resolution of the House of Commons. For although indeed it might have been expressed with more perspicuity, yet the words of it, as they are, sufficiently shew that the meaning of it is no otherwise. To that purpose, besides the words of the whole frame of this resolution of the Judges, as it is in the Coppy transcribed out of the Lord Chief Justice *Andersons* book, written in his own hand (which book was there offered to be shewed also in behalf of the House of Commons.) It was observed that the Records of the first part of it shew plainly, that all the Judges of *England* then resolved that the Prisoners, spoken of in the first part of their resolution, were onely Prisoners committed with cause shewed, for they onely said they might not be delivered by any of the Courts, without due Trial by Law and Judgement of acquital had; which shews plainly that they meant, that by trial and acquital they might be delivered: but it is clear that no trial, or acquital can be had where is not some cause laid to their charge, for which they ought to stand committed. Therefore in that part of the resolution, such Prisoners are onely meant, as are committed without cause shewed, which also the Judges in that resolution expressly thought necessary, as appears in the second part of the resolution, wherein they have these words, If upon Return of the *Habeas Corpus* the cause of their commitment be certified to the Judges, as it ought to be, &c. by which words they shew plainly that every return of a commitment is insufficient that hath not a cause shewed of it.

And to that which Mr. *Attorney* said, as if the cause were sufficiently expressed in generality, if the *Kings* Command, or the Councils were expressed in it; and as if that were meant in the resolution for a sufficient general cause: it was answered, That it was never heard of in Law, that the power, or Person that committed the Prisoner was understood for the *Causa captionis*, or *Causa detentionis*, but onely the reason why that Power, or Person committed the Prisoner: as also in common speech, if a man ask why and for what cause a man stands committed, the answer is not, that such a one committed him, but his offence, or some other cause is understood in the question, and is to be shewed in the Answer. But to say that such an one committed the Prisoner, is an answer to the question who committed him, and not why, or for what cause he stands committed.

Then for that of the Coppy of the Report of 13. *Fac.* shewed forth by Mr. *Attorney*, it was answered, That the Report it self, which had been before seen and perused among many other things at a Committee made by the House, was of sleight, or no Authority; for that it was taken by one, that was at that time a young Student



only, and was a Reporter in the *Kings-bench*; and there was not any other Report to be found that agreed with it.

Secondly, although the Reports of young Students when they take the words of Judges, as they fall from their mouth at the Bench, and in the Person and form as they are spoken, may be of good credit; Yet in this Case there was not one word so reported; but in truth, there being three Cases a time in the *Kings-bench*, one *Ruswell*, and one *Allen*, and one *Saltonstall*, every of which had something of like nature in it; the Student having been present in the Court, made up the form of one Report, or Case, out of all those three, in his own words, and so put it into his book; so that there is not a word in the Report but is framed according to the Students fancie, as it is written, and nothing is expressed in it as it came from the mouth of the Judges, otherwise then his fancie directed him.

Thirdly, there are in the Report plain falshoods of Matter of Fact, which are to be attributed either to the Judges, or to the Reporter. It is most likely by all reason that they proceeded from the Reporters fault: but however those Matters of falshood shew sufficiently, that the credit of the rest, is of slight value for the purpose.

It is said in the Report that *Harecourt* being committed by the Council, was bayled in 40. *Eliz.* upon a privy Seal or a Letter, where as there was no such thing in truth. And it is said there, that no such kinde of Letters are filed there in any case whatsoever. That resolution of the Judges in 34. is miscited there, and in 36. of Queen *Eliz.* and it is said there that by that resolution, a Prisoner returned to be committed by the command of the Council, might not at all be delivered by the Court: whereas no such thing is comprehended in in that resolution.

But that which is of most moment is, that howsoever the truth of the report were, yet the opinion of the Judges, being sudden without any debate, had of the case, is of sleight moment. For in difficult points especially, the gravest and most learned men living may on the sudden let fall, and that without disparagement to them, such opinions as they may well, and ought to change upon further enquiry and examination, and full debate had before them, and mature deliberation taken by them. Now plainly in that case of the 13. *Jacob.* there is not so much as pretence of any debate at Bar, or Bench. All that is reported to have been, is reported as spoken upon the sudden: and can any man take such a sudden opinion to be of value, against solemn debates and mature deliberation since had of the point, and all circumstances belonging to it? which have within this half year been so fully examined and searched into, that it may well be affirm'd, that the learned'st man whatsoever, that hath now considered of it, hath within that time, or might have, learned more reason of satisfaction in it, then ever before he met with. Therefore the sudden opi-

opinions of any Judge to the contrary, is of no value here. Which also is to be said of that opinion obviously delivered in the Commons House, 18. *Fac.* as Mr. *Attorney* objected out of the Journal book of the House.

But besides, neither was the truth of that report of that opinion in the Journal any way acknowledged; For it was said in behalf of the House of Commons, that their Journals were for matter of order and resolutions of the House, of such Authority as that they were as their Records; but for any particular Mans opinion noted in any of them, it was so far from being of any Authority with them, that in truth no particular opinion is at all to be entered in them: and that their Clerks offend whenever they do the contrary. And to conclude, no such opinion whatsoever can be sufficient to weaken the clear Law, comprehended in these resolutions of the House of Commons, grounded upon so many Acts of *Parliament*, so much reason of Common Law, and so many Presidents of Record, and the resolution of all the Judges of *England*, and against which no Law written, not one President, not one reason hath been brought that makes any thing to the contrary.

And thus to this purpose ended the next day of the Conference desired by the Lords, and had by a Committee of both Houses.

## The Proceedings against the Earle of SUFFOLK. 14. April 1628.

**M**R. *Kerton* acquainted the House how that the Earle of *Suffolk* had said to some Gentlemen, that Mr. *Selden* had razed a Record, and deserved to be hanged for going about to set division betwixt the *King* and his Subjects. And being demanded to whom the words were spoken, he was unwilling to name any, till by question it was resolved he should nominate him. He then named Sr. *John Strangwaies*; who was unwilling to speak what he had heard from the Earle: but being commanded by the House, and resolved by question, he confessed.

That upon *Saturday* last he being in the Committee Chamber of the Lords, the Earle of *Suffolk* called him unto him, and said, Sir *John*, will you not hang *Selden*. To whom he said, for what? The Earle replied; By God he hath razed a Record, and deserves to be hanged.

This the House took as a great injury done to the whole House, Mr. *Selden* being imployed by them in the conference with the Lords in the great cause concerning the Liberty of the Persons of the Subjects.

The House presently sent Sr. *Robert Philips* with a message to the Lords to this effect; He expressed the great care the Commons had upon all occasions to maintain all mutual respect and correspondency be-



betwixt both Houses : Then he informed them of a great injury done by the Earle of *Suffolk* to the whole house, and to Mr. *Selden* a particular Member thereof, who by their Command had been imployed in the late conference with their Lordships: That the House was very sensible thereof : and, according to former Presidents, made them truly acquainted with it, and demanded Justice against the Earle of *Suffolk* : he read the words, saying, they were spoken to Sir *John Strangways*, a Member of their House.

After a short stay the Lords called for the Messenger, to whom the Lord *Keeper* gave this Answer; He signified the great desire and care of their Lordships to maintain and increase the correspondencies betwixt both Houses, and as a Testimony thereof they had partly taken into consideration the charge : That the Earle of *Suffolk*, being a Man of great place and Honour, had voluntarily protested upon his Honour and Soul, that there passed no such words as those from him to Sr. *John Strangways* : And the Lord *Keeper* wished that their Lordships speedy proceedings in this business, might testifie their love and good will to the Commons House.

The next day, being the 15. of *April*, Sr. *John Strangways* made a Protestation openly in the House, wherein he avowed that (notwithstanding the Earls denial) he did speak those words positively unto him, and would maintain it any way fitting a Member of that House, or a Gentleman of Honour.

They ordered that this Protestation should be entered into the Journal book, and that a Committee should take into consideration what was fit for the House to proceed to for the justification of Sr. *John Strangways*, and what was fitting to be done in this Case, and to examine Witnesses of the proof of the words.

Upon the 17. day Sr. *John Elliot* reported what the Committee had done. That they had sent for and examined Sr. *Christopher Nevill*; who related, that upon *Saturday* being in the Lords Committee Chamber, the Earle of *Suffolk* said thus to him : Mr. *Attorney* hath cleared the business, and hath made the cause plain on the *Kings* side; and further said, Mr. *Selden* hath razed a Record, and hath deserved to be hanged, and the Lower House should do well to joyn with the Higher in a Petition to the *King* to hang him; and added as a reason: For Mr. *Selden* went about, and took a course to divide the *King* from his people : or words to that effect. And being asked whether he conceived that those words of dividing the *King* from his people, had relation to the whole and general action of Mr. *Selden* before the Lords, or to the particular of razing a Record; he conceived they were referred to the general action.

They had examined one Mr. *Littleton*, who confessed he heard the Earle of *Suffolk* speak to a Gentleman, whom he knew not, words to this effect, *viz.* That he would not be in Mr. *Seldens* Coat for 10000 l. and that Mr. *Selden* deserved to be hanged.

The

The second part of this Report concerned the particuler of *Sr. John Strangwayes*, wherein though the Committee found no Witness to prove the words spoken to *Sr. John Strangwayes*, yet there were many circumstances which perswaded them of the truth thereof.

1. That the same words in the same syllables were spoken to *Sr. Christopher Nevill*, and that the Earle as he called to him *Sr. John Strangwayes*, so he called to him *Sr. Christopher Nevill*.

2. That the Earle of *Suffolk* called *Sr. John Strangwayes* to him and spake to him, was proved by *Sr. George Fane*, and *Sr. Alexander St. John*, at which time the Earle seemed full of that which he delivered.

3. That *Sr. John Strangwayes* instantly after his discourse with the Earle of *Suffolk* went to the Earle of *Hartford*, and delivered him the passages betwixt them, being the same related in the house.

4. From the unwillingness of *Sr. John Strangwayes*, though called upon by the House, to testifie against the Earle, till it was resolved by question he should do it: from a probabillity, that had not these words been spoken to himself, it is like he would have produced *Sr. Christopher Nevill*, from whom he also heard the same.

5. From the worth of the Gentleman, and his ingenious protestation in the House, That he was ready to justifie the truth of what he said in any course the House should thinck meet, or was fit for a Gentleman of Honour.

Hereupon the House resolved by question.

1. That the Earle of *Suffolk*, notwithstanding his denial, had laid a most unjust and scandalous imputation upon *Mr. Selden*, a Member of the House, being imployed in the service of the House, and therein upon the whole House of Commons.

2. That this House upon due examination is fully satisfied that *Sr. John Strangwayes*, (notwithstanding the Earle of *Suffolk's* denial) hath affirmed nothing but what is most true and certain.

3. That these particulers and additions be again presented to the Lords, and the Earle of *Suffolk* newly charged at the Bar, and the Lords desired to proceed in Justice against the Earle, and to inflict such punishment upon him as an offence of so high a nature, being against the House of Commons, doth deserve.

*Sr. John Elliot* was partly sent with the Message to the Lords; who after a while returned this answer, That they had taken the Message into consideration, and would further take it into due consultation, and in convenient time would return an answer by Messengers of their own.



## Several Speeches made at the debates concerning the KINGS Propositions for supply.

Mr. ALFORD.

**T**Hat to answer punctually to every Article, was but to discover the *Kings* wants, which is neither safe nor fit, as the world now goes; nor is it good for him to ask more then we can give, nor for us to offer disproportionably : withall it might draw to a precedent for the Subjects to make and maintain Wars.

Sr. ROBERT MAUNSELL.

**I**T had been much better for us to have taken care for these provisions 3. years since. His desire is not to have the Commons overburthened. That 7. of these Propositions are not to be neglected, *viz.* The safe guarding of the Coasts, The defence of the *Elve*, The defence of *Rockell*, The increasing of the *Navy*, The repairing of the Forts, The discharge of the Arrears of Merchants ships, and the defence of the *King of Denmark* : the other to be delayed to our next meeting at *Michalmas*.

Sr. FRANCIS SEYMOUR.

**T**Hat as supply is desired, so are we met for that purpose ; but if by those late courses we be disabled, then he is not to expect it from us : our greatest grievances being his *Majesties* pressing wants ; two subsidies formerly given, and five forcibly and unadvisedly taken, are great motives not to be too forward. That we have too hastily drawn two great Enemies upon us, and all this done by men of small, or no judgement.

Sr. PETER HAYMAN.

**T**Hat vast Propositions are delivered to us in shew, which he desires he may give an Estimate of, that first brought them in.

Mr. PYMM.

**T**Hat in no Case it is fit to examine the Propositions, especially of the Arrearages of the Merchant ships, and for preparation of the forreign Wars.

Secretary COKE.

**T**Hat three things especially are to be taken into consideration ; the defence of *Rockell*, the *Elve*, and the *Fortes*. He perswades to give bountifully ; and though the people do not presently pay it, yet

yet it gives the *King* credit abroad, and much advanceth his affairs. We have already by our carriage and temper taken the *Kings* heart, which he adviseth we make good use of.

Sr. DUDLEY DIGGS.

For to try and examine faithfully the Propositions, he refers it to the Judgement of the House, whether it be fit to handle the business in order, or to give in gross, considering that the Bill of *Tonnage* and *Poundage* is now brought into the House, which he thinks they conceive to be given for the safe-guarding of the Seas.

Mr. SPENCER.

IN no Case to enter into particulars. That formerly hath been given 5. Subsidies for the repairing of the Forts, and no penny bestowed on them, but the money wasted in dishonour.

Mr. JOHN ELLIOT.

That our late disasters at *Calis* & *Ree* might discourage us from thinking of forreign attempts. At *Calis*, when we neglected the taking of the *Spanish* Fleet in the Harbour, nothing attempted at our landing but drinking and disorder, no good account given at the return. Concerning service at *S. Martins*, the whole account carried against the Judgement of the best Commanders, which makes all the World despise and condemne us, besides the enriching of the Enemy with kindenesses, and parling with the Forts with presents, which time will bring to light.

Sr. EDWARD COKE.

That when *England* stood alone without friends and addition of Kingdoms, as 42. E. 3. the *King* (wholly guided by his Parliament-Council) brought alwayes home Victories both against *France* and *Scotland*, his 4. reasons of it were, 1. Good Council, 2. Valiant Leaders, 3. Timely provision, 4. Good imployment and fore-cast. And likewise in *Ric. 2. Hen. 4. Hen. 5.* He desires to give plentifully, and that in gross, not to examine the particulars, alleadging *Solomon's* rule, *qui repetit, separat*: for (saied he) if we rip them up, we sever them for ever. And in that Proposition for setting forth 30. ships, shall we both pay *Tonnage* and *Subsidies* for them? This will draw a dangerous President. Likewise that other in setting forth (God knows whether) a 1000. Horse and 10000. Foot; being not able to set them forth, how shall we look to maintain them abroad? That in an Iland the defensive War is best and most proper. To conclude, our guift in gross will serve best with these times, for by that course we shall seem to allow all the Propositions, and except against none.



S<sup>r</sup>. THOMAS WENTWORTH.

**T**Hat he will look after the *Iland of England* and no further, except our Fortunes were better. That as he is bound in duty to the *King*, so in faithfull love to his Countrey. That our freedom and Liberty being known and granted, we then may proportion our guilt. His conclusion was, that the final debate of this question may be laid aside untill *Friday*, and in the mean time go on with our grievances.

S<sup>r</sup>. HENRY MARTIN.

**N**ot to dash the Ship of the Common-wealth twice upon one Rock. The disease that we are now sick of, is the *Kings Evil*, which none but himself can cure; and *Jacob's* example is our best Pre-  
dent, who wrestling with the Angel, would not give over till he got the blessing. That our often repetition of grievances breeds hate and dislike. And because we have not to give what is asked, Yet to give freely what we intend to give; and so by this freeness we shall win the *Kings* heart.

M<sup>r</sup>. KERTON.

**H**E desires to know the Rock, to the end we may avoid it; and not to go back, but forward in our conclusion.

S<sup>r</sup>. ROBERT PHILIPS.

**H**is good hopes are in his *Majesties* royal care and wisdom. That the free and great Council is the best: but time and hope of change is coming towards us; *Rome* and *Spain* trench deeply into our Councils. That heretofore there hath been a fair progress on both parts, according to the saying of the late *King*, *If the Parliament did, or should give more then the Countrey could bear, they gave him a purse with a knife in it.*

## Serjant HOSKINS.

**T**Hat knowing our own rights, we shall be better enabled to give. Two legs go best together, our just grievances and our supply; which he desires may not be seperated, for by presenting them together, they shall be both taken, or both refused.

Ser-

Serjant ASHLEYS Argument, seconding  
Mr. ATTORNEY, in the behalf of his  
M A J E S T Y.

I Hope it will be neither offensive nor tedious to your Lordships, if I said somewhat to second Mr. Attorney: which I the rather desire, because yesterday it was taken by the Gentlemen of, and argued on the behalf of the Commons, that the cause was as good as gained by them, and yielded by us, in that we acknowledged the Statute of *Magna Charta*, and the other subsequent Statutes to be yet in force: for on this they inforced this general conclusion.

*That therefore no man could be committed, or imprisoned, but by due process, presentment or indictment.*

Which we say is a *non sequitur* upon such our acknowledgement; for then it would follow by necessary consequence, that no imprisonment could be justified but by process of Law, which we utterly deny. For in the cause of the Constable, cited by Mr. Attorney, it is most clear that by the ancient Law of the Land a Constable might *ex officio*, without any Warrant, Arrest and restrain a man to prevent an affray, or to suppress it. And so is the Authority 38. Hen. 8. *Brooks abstract*. So may he, after the affray, apprehend and commit to Prison the Person that hath wounded a man that is in peril of death, and that without Warrant, or Process; as it is in 38. E. 3. fol. 6.

Also any man that is no Officer may apprehend a Fellow without Writ, or Warrant, or pursue him as a Wolf, and as a common enemy to the Common-wealth, as the Book is 14. H. 8. fol. 16. So might any one arrest a Night-walker, because it is for the common profit, as the reason is given 4. Hen. 7. fol. 7.

In like manner the Judges in these several Courts may commit a man, either for contempt, or misdemeanour, without either Process or Warrant, other then take him Shrief, or take him Marshall, or Warden of the Fleet. And the Adversaries will not deny, but if the King will alleadge cause, he may commit a man *per mandatum* as the Judges do, without Process, or Warrant.

And various are the cases that may be instanced, wherein there may be a Lawfull commitment without Process. Wherefore I do positively and with confidence affirm, that if the imprisonment be Lawfull, whether it be by Process, or without Process, it is not prohibited by the Law.

Which being granted, then the question will aptly be made, whether the King or Council may commit to Prison *per legem terra* were onely that part of the Municipal Law of this Realm, which we call the *Common Law*: for there are also divers Jurisdictions in this Kingdom which are also so reckoned the Law of the Land.



As in *Kendrick's Case* in the report, fol. 8. the 1. *Ecclesiastical* Law is held the Law of the Land, to punish Blasphemies, Schismes, Heresies, Simony, Incest, and the like, for a good reason there rendred, *viz.* That otherwise the *King* should not have power to do Justice to his Subjects in all Cases, nor to punish all Crimes within his Kingdom.

The *Admiral's* Jurisdiction is also *Lex terra*, for things done upon the Sea: but if they exceed their Jurisdiction, a prohibition is awarded upon the Statute of *nullus liber homo*; by which appears that the Statute is in force, as we have acknowledged.

The *Martial* likewise, though not to be exercised in times of peace, when recourse may be had to the *Kings* Courts, yet in times of invasion, or other times of Hostility, when an Army Royal is in the field, and offences are committed, which require speedy reformation, and cannot expect the solemnity of legal Trials; then such imprisonment, execution, or other Justice done by the Law *Martial* is Warrantable, for it is then the Law of the Land, and is *Jus gentium*, which ever serves for a supply in the defeat of the Common Law, when ordinary proceeding cannot be had.

And so it is also in the case of the Law of the *Merchant*, which is mentioned 13. E. 4. fol. 9. 10. where a Merchant stranger was wronged in his goods, which he had committed to a Carrier to convey to *Southampton*, and the Carrier imbezelled some of the goods; for remedy whereof the Merchant sued before the Council in the *Star-Chamber* for redress. It is there said thus, Merchant strangers have by the *King* safe conduct for coming into this Realm: therefore they shall not be compelled to attend the ordinary Trial of the Common Law, but, for expedition, shall sue before the *Kings* Council, or in Chancery, *de die in diem & de hora in horam*: where the Case shall be determined by the Law of Merchants.

In the like manner it is in the Law of State; when the necessity of State requires it, they do and may proceed to natural equity; as in those other Cases where the Law of the Land provides not, there the proceeding may be by the Law of natural equity: and infinite are the Occurrences of State unto which the Common Law extends not. And if these proceedings of State should not also be accounted the Law of the Land, then we do fall into the same inconveniency mentioned in *Cawdries Case*, that the *King* should not be able to do Justice in all Cases within his own Dominions.

If then the *King* nor his Council may not Commit, it must needs follow, that either the *King* must have no Council of State, or having such a Council, they must have no power to make Orders, or Acts of State; Or if they may, they must be without means to compell obedience to those Acts; and so we shall allow them Jurisdiction, but not compel obedience to those Acts, but not correction, which will be then as fruitless as the Command. *Frustra potentia qua nunquam redigitur in statutum*. Where as the very Act of *Westminster* first, shews

shews plainly that the *King* may commit, and that his commitment is lawfull, or else that A & would never have declared a man to be irrevocable when he is committed by the Command of the *King*, if the Law-makers had conceived that his commitment had been unlawfull. And Divine truth informs us, that the *Kings* have their power from God, the *Psalmist* calling them *the children of the most High*; which is in a more special manner understood then of other men, for all the Sons of *Adam* are by election the Sons of God, and all the Sons of *Abraham* by recreation, or regeneration, the Children of the most High, in respect of the power which is committed unto them, who hath also furnished them with ornaments and arms fit for the exercising of that power, and hath given them Scepters, Swords, and Crowns: Scepters to vestitute and Swords to execute Laws, and Crowns, as Ensigns of that power and dignity, with which they are invested: shall we then conceive that our *King* hath so far transmitted the power of his Sword to inferiour Magistrates, that he hath not reserved so much Supream power, as to commit an Offender to prison? 10. H. 6. fol. 7. It appears that a Steward of a Court Leet may commit a man to prison, and shall not the *King* from whom all inferior power is deduced have power to commit? We call him the fountain of Justice, yet when these streams and rivolets, which flowe from that Fountain come fresh and full, we would so far exhaust that Fountain, as to leave it dry, but they that will admit him so much power do require the expression of the cause: I demand whether they will have a general cause alleadged, or a special, if general as they have instances for Treason, Fellony, or for Contempt, for to leave fencing and to speak plainly as they intend it, If loan of money should be required and refused, and thereupon a commitment ensue, and the cause signified to be for a contempt, this being unequal inconvenience from yielding the remedy is sought for the next Parliament: would be required the expression of the particular cause of the commitment: Then how unfit would it be for *King* or Council in Cases to express the particuler Cause, its easily to be adjudged when there is no State, or pollicy of government, whether it be Monarchial, or of any other frame, which have not some secrets of State, nor communicable to every vulgar understanding.

I will instance but one, If a *King* imploy an Ambassadour to a Forreign Countrey of States with instructions for his Negotiation, and he pursue not his instructions, whereby dishonour and dammage may ensue to the Kingdom, is not this commitment?

And yet the particuler of his instruction and the manner of his mis-carrying is not fit to be declared to his Keeper, or by him to be certified to the Judges, where it is to be opened and debated in the presence of a great audience.

I therefore conclude for offences against the State in Case of State Government, the *King* and his Council have lawfull power to punish  
by



by imprisonment without shewing particuler cause, where it may tend to the disclosing of State-Government. It is well known to many that know me, how much I have laboured in this Law of the Subjects Liberty very many years before I was in the *Kings* service, and had no cause then to speak, but to speak *ex animo*, yet did I then maintain and publish the same opinion which now I have declared concerning the *Kings* Supream power in matters of State, and therefore can not justly be censured to speak at this present onely to merit of my Master, But if I may freely speak my own understanding, I conceive it to be a question too high to be determined by any legal direction, for it must needs be an hard case of contention, when the Conquerour must sit down with irreparable losses, as in this Case: If the Subject prevails he gains Liberty, but looseth the benefit of that State-Government, by which a Monarchie may soon become an Anarchie, or if the State prevails, it gives absolute Sovereignty but looseth Subjects: not their subjection, for obedience we must yield, though nothing be left us but prayers and tears, but yet looseth the best part of them which is their affections whereby Sovereignty is established: and the Crown formerly fixt on his Royal head, between two such extremes there is not way to moderate, but to finde a *medium* for the accommodation of the difference, which is not for me to prescribe, but onely to move your Lordships to whom I submit.

After Mr. *Serjeant* his speech ended, my Lord *President* said thus to the Gentlemen of the House of Commons. That though at this free conference, Liberty was given by the Lords to the *Kings* Council to speak what they thought fit for his Majesty, Yet Mr. *Serjeant Ashley* had no Authority, or direction from them to speak in that manner he hath done.

## M<sup>r</sup>. NOYE his Argument the 16. of April 1628.

**H**E offered an answer to the inconveniences presented by Mr. *Attorney*, which were 4. in Number.

First where it was objected that it was inconvenient to express the cause for fear of divulging *Arcana Imperii*, for hereby all may be discovered and abundance of Traitors never brought to Justice.

To this that Learned Man answered.

That the Judges by the intention of the Law are the *Kings* Council, and the secrets may safely be committed to all, or some of them who might advise whether they will bayl him, and here is no danger to *King*, or subjects, for their Oath will not permit them to reveal the secrets of the *King*, nor yet to detain the Subjects long, if by Law he be to be bayled.

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Secondly, for that Objection of the Children of *Odonell*, he laid this for a ground, that the King can do no wrong, but in Cases of extreame necessity, we must yield sometimes for the preservation of the whole State *ubi unius damnum utilitate publica rependitur*, he said there was no trust in the Children of Traitors, no wrong done if they did *tabe facere*, or *marcescere in Carcere*. It is the same Case of necessity as when to avoid the burning of a Town, we are forced to pull down an honest mans House, or to compell a man to dwell by the Sea-side for defence, or fortitude. Yet the King cannot do wrong, for *potentia juris est non injura*: Ergo the Act of the King though to the wrong of another is by the Law made no wrong, as if he commanded to be kept in Prison, yet he is responsal for his wrong, he quoted a book, 42. 6. *Aff. Port.*

Thirdly, the instance made of *Westminster*. First he said there was a great difference between those 3. Mainprize, Bail, and Replevin: The Statute saith a man cannot be repleiued: Ergo not bayled *non sequitur*, Mainprize under pain, Bayl body for body, no pain ever in Court to be declared, Replevin neither by surety nor bayl of Replevin never in Court, the Statute saith a man cannot be Repleiued: Ergo not bayled *non sequitur*.

Fourthly, where it is said that bayl is *ex gratia*, he answers, that if the Prisoner comes to *Habeas Corpus*, then it is not *ex gratia*, Yet the Court may advise, but mark the words *ad subjiciendum & recipiendum prout Curia consideraverit*, now it is impossible the Judges should do so, if no cause be expressed, for if they know no cause, he may bring the 1. 2. 3. and fourth *Habeas Corpus*, and so infinite till he finde himself a perpetual Prisoner, so that no cause expressed is worse for a man, then the greatest cause or Villany that can be imagined, and thus far proceeded that learned Gentleman.

Mr. GLANVILES Argument.

HE said that by favour of the House of Commons he had liberty to speak, if opportunity were offered, he applies his answer to one particuler of Mr. Attorney who assigned to the King 4. great trusts, (1.) of War, (2.) Coins, (3.) Denizens, (4.) Pardons, Is assented unto, that the King is trusted with all these 4. legal Prerogatives, but the Argument followeth not, the King is trusted with many Prerogatives: Ergo in this *non sequitur non est sufficiens enumeratio partium*, he said he could answer these particulars with 2. rules, whereof the first should wipe of the first and the second, and the other, the third and fourth.

The first rule is this, there is no fear of trusting the King with any thing, but the fear of ill Council, the King may easily there be trusted where ill Council doth not ingage both the King and Subjects, as it doth in matter of War and Coin, If he miscarry in the Wars, it is not alwayes *pecuniam Achiro*, but he smarts equally with the people, If he



abase his Coin, he looseth more then any of his people : *Ergo* he may safely be trusted with the flowers of the Crown, War, and Coin.

The second rule he began was this , when the *King* is trusted to confer grace, it is one thing , but when he is trusted to infer an injury it is another matter: The former power cannot by miscounselling be brought to prejudice another , The latter may if the *King* pardoneth a guilty Man he punisheth not a good subject, if he denizen never so many strangers it is but *damnum sine injuria*, we allow him a liberty to confer grace, but not without cause to infer punishment ; and indeed he cannot do injury, for if he command to do a Man wrong the command is void & *alter sit Author* , and the Actor becomes the wrong doer. Therefore the *King* may be safely trusted with War , Coin, Denizens, and Pardons , but not with a power to imprison without expreſſion of Cause, or limmitation of time, because as the Poet tells us *Libertas potius auro*.

## The Answer of the Judges for matter of Fact upon the *HABEAS CORPUS*, 21. April.

**T**He Chief Justice saith , they are prepared to obey our Command, but they desire to be advised by us, whether they being sworn upon penalty of forfeiting Body, Lands, and Goods, into the *Kings* hands to give an account to him, may without Warrant do this.

The Duke said he had acquainted the *King* with the business , and for ought he knoweth he is well content therewith. But for better assurance he hath sent his brother of *Anglesey* to know his pleasure.

*Devonshire* saith, if a complaint be made by a mean Man against the greatest Officer in this place, he is to give an account of his doings to this House.

Bishop of *Lincoln* saith , this motion proceeded from him, and so took it for clear , that there was an appeal from the Chancery to a higher Court then the *Kings-bench*, and in that Court hath ever given an account of their doings.

The Lord *Say* saith, he wondred there should be any question made of this business , because in his opinion this being the highest Court did admit of no appeal. The President said the Judges did not do this by way of appeal, but as the most common way for them, this being a matter concerning the *Kings* prerogative : Lord *Say* saith, if they will not declare themselves, we must take into consideration the point of our privilege.

The Duke saith, this was not done by the Judges as fearing to answer, but of respect to the *King*. And now his brother was come with answer from the *King*, that they might proceed.

Order

Order was taken that this passage should not be entered into the Journal Book, and so Judge  
 WHITLOCK spake.

**M**Y Lords we are by your appointment here ready to clear any asperſion of the Houſe of Commons in their late preſentment upon the *Kings-bench*, that the Subject was wounded in this Judgement there lately given. If ſuch a thing were my Lords, your Lordſhips, not they have the power to queſtion and Judge the ſame, But my Lords I ſay there was no Judgement given whereby either the prerogative might be enlarged, or the right of the ſubject trenched upon. It is true my Lords, in Michaelmas Term laſt ſower Gentlemen petitioned for a *Habeas Corpus*, which they obtained, and Council was aſſigned unto them, the return was *per ſpialem mandatum Domini Regis*, which likewise was made known unto us under the hands of eighteen privy Councillours. Now my Lords, if we had delivered them preſently, upon this, it muſt have been, becauſe the King did not ſhew cauſe, wherein we ſhould have judged the King had done wrong, and this is beyond our knowledge, for he might have committed them for other matters then we could have imagined. But they might ſay thus, they might have been kept in Priſon all their dayes, I anſwer no, but we did remit them, that we might better adviſe of the matter, and they the next day might have had a new Writ, if they had pleaſed, but they ſay, we ought not to have denied bayl, I anſwer, if we had done ſo, it muſt needs have reflected upon the King that he had unjuſtly imprifoned them, and it appears in *Dyer. 2. Eliſ.* that divers Gentlemen being committed, and requiring *Habeas Corpus*, ſome were bayled, others remitted, whereby it appears, much is left to the diſcretion of the Judges.

For that which troubleth ſo much *remittitur quouſque*, this my Lords was onely, (as I ſaid before) to take time what to do, and whereas they will have a difference betwixt *remittitur* and *remittitur quouſque*, my Lords I confeſs I can finde none, but theſe are new inventions to trouble old Records. And herein my Lords we have dealt with knowledge and underſtanding, for had we given a Judgement, the party muſt thereupon have reſted, every Judgement muſt come to an iſſue, in matter, in fact, or demur in point of Law, here is neither, therefore no Judgement.

For endeavouring to have a Judgement entered, it is true, Mr. Attorney preſſed the ſame for his Maſters ſervice, but we being ſworn to do right betwixt the King and his ſubjects commanded the Clark to make no entry, but according to the old form, and the rule was given by the Chief Juſtice alone. I have ſpent my time in this Court, and I ſpeak confidently, I did never ſee nor know by any Record that upon



such a Return as this, a man was bayled, the King not first consulted with in such a Case as this.

The Commons House do not know what Letters and Commands we receive, for these remain in our Court, and were not viewed by them, for the rest of the Matters presented by the House of Commons they were not in agitation before us, whether the King may commit and how long he may detain a man committed, therefore having answered so much as concerneth us, I desire your Lordships good constructions of what hath been said.

*Judge F O N E S*

Said he was here to deliver before us what judgement was given before them concerning the *Habeas Corpus*, he answered, no Judgement was given, and the Matter of Fact was such as my brother delivered unto you yesterday. These 4. Gentlemen were committed to the Fleet-Gate-House and Marshall of the Kings House-hold. 4. Returns were made upon the Writs, and every one of them had a Councillour appointed, who had Coppies of the Returns. A rule was granted, their Council heard, and exception taken to the Return, because it did not shew cause of their caption.

These were of no force in the opinion of the Judges, the next exception was, because no cause of their commitment was shewed, which the Judges held to be all one in point of Law. Then my Lords, they alleadged many Presidents and Statutes of themselves, which the Kings Attorney answered. That Persons committed by the King, or Council were never bayled, but his pleasure was first known.

We agreed at the Chamber of the Chief Justice that all the Statutes alleadged are in force, but whether we should bayl them or no, was the question, therefore we remitted them *quousque*. After which Mr. Attorney required a Judgement might be entered, I commanded the Clark he should not suffer any such thing to be done, because we would be better advised.

But some will say our Act is otherwise, I answered no, for we have done no more then we do upon ordinary Writ, when we purpose to be better advised, and that was onely an Interlocutorie order. But my Lords put the case a *Habeas Corpus* should be granted for one that is committed by the House of Commons, would they (thinck you) take it well he should be bayled at his first coming to the Court: I thinck they would not, and I thinck the King would have done so in this case, now my Lords, there is a Petition of Right, and a Petition of Grace, to be bayled is a matter of Grace, therefore if a man be brought upon an *Habeas Corpus*, and not bayled, he cannot say the Court hath done him any wrong. I have now served seven years Judge in this Court, and my conscience beareth me witness that I have not wronged the same, I have been thought sometimes too forward for the Liberty of the Subject. I am my self *Liber homo*, my  
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Ancestors gave their voice with *Magna Charta*. I enjoy that House still, which they did, I do not now mean to draw down Gods wrath upon my posterity, and therefore I will neither advance the Kings prerogative, nor lessen the Liberty of the Subject to the danger of either *King*, or People, this is my profession before God and your Lordships.

*Judge DODDERIDGE*

SAith it is no more fit for a Judge to decline to give an account of this doings, then for a Christian of his Faith. God knoweth, I have endeavoured alwayes to keep a good conscience, for a troubled one, who can bear, the Kingdom holds of none but God, and Judgements do not pass privately in Chambers, but publick in Court, where every one may hear, which causeth Judgement to be given with maturity. Your Lordships have heard the particulars delivered by my brethren, how that Council being assigned to those 4. Gentlemen, in the latter end of Michaelmas Term their Cause received hearing, and upon consideration of the Statutes and Records we found some of them to be according to the good old Law of *Magna Charta*, but we thought that they did not come so close to this Case, as that bayl should be thereupon presently granted. My Lords, the *Habeas Corpus* consisteth of 3. parts, the Writ, the Return upon the Writ, or schedule and the Entry, or rule reciting the *Habeas Corpus*, and the Return together with the opinion of the Court, either a *remittitur*, or *traditur in ballium*. In this Case a *remittitur* was granted, which we did that we might take better advisement upon the Case, and upon the *remittitur* (my Lords) they might have had a new Writ the next day, and I wish they had, because it may be they had seen more, and we had been eased of a great labour. And my Lords, when the *Attorney* upon the *remittitur* pressed an Entry, we all straitly charged the Clark that he should make no other Entry then such as our Predecessors had usually made in like Cases: for the difference (my Lords) betwixt *remittitur* and *remittitur quousque* I could never yet finde any, I have now sat in this Court 15. years, and I should know something, surely if I had gone in a Mill so long, dust would cleave to my cloaths. I am old and have one foot in the grave, therefore I will look to the better part as near as I can. But *omnia habere in memoria & in nullo errare divinum potius est quam humanum*.

*THE LORD CHIEF JUSTICE*

SAith, he shall not speak with confidence, unless he might stand upright in the opinion of the House, and protested what he spake the day before, was not said by him with any purpose to trench upon the Priviledges of this House, but out of that respect which by his place he thought he owed to the *King*, he said concerning the



point, he was to speak of, that he would not trouble the Lords with things formerly repeated, wherein he concurred with his brethren. He said, if it were true, the *King* might not commit, they had done wrong in not partly delivering, for my Lords (saith he) these Statutes and good Laws being all in force, we meant not to trench upon any of them, most of them being Commentaries upon *Magna Charta*: but I know not any Statute that goeth so far, that the *King* may not commit. Therefore justly we think, we delivered the interpretation thereof to that purpose: for my Lords, *Lex terræ* is not to be found in this Statute, they gave me no example, neither was there any Cause shewed in the Return. A President (my Lords) that hath run in a storm doth not much direct us in point of Law, and Records are the best Testimonies. These Presidents they brought, being read, we shewed them wherein they were mistaken, if we have erred *erramus cum Patribus*, and they can shew no President, but that our Predecessors have done as we have done, sometimes bayling, sometimes remitting, sometimes discharging. Yet we do never bayl any committed by the *King*, or his Council till his pleasure be first known. Thus did the Lord Chief Justice *Coke* in *Raynards Case*. They say this would have been done if the *King* had not written, but why then was the Letter read and published and kept, and why was the Town Clark sent carefully to enquire (because the Letter so directed) whether these men offered for bayl, were subdedy men? the Letter sheweth also that *Beckwith* was committed for suspicion of being acquainted with the Gun-Powder-Treason, but no proof being produced the *King* left him to be bayled.

The Earle of WARVVICKS speech,  
21. April 1628.

**M**Y Lords I will observe something out of the Law wherein this liberty of the Subjects Person is founded, and some things out of Presidents which have been alleadged. For the Law of *Magna Charta*, and the rest concerning these points, they are acknowledged by all to be of force, and that they were to secure the Subjects from wrongfull imprisonment as well, or rather more concerning the *King* then the Subject, why then besides the grand *Charter* and those 6. other Acts of *Parliament*? in the very point we know that *Magna Charta* hath been at least 30. times confirmed, so that upon the matter we have 6. or 7. and thereby Acts of *Parliament* to confirm this liberty, although it was made a matter of derision the other day in this House.

One is that of 36.E.3. N<sup>o</sup>. 9. and another in the same year, N<sup>o</sup>. 20. not printed, but yet as good as those that are, and that of 42. E. 3. cap. 3. so express in the point, especially the Petition of the Commons,

mons that year, which was read by Mr. *Littleton* with the *Kings* answer so full, and free from all exception, to which I refer your Lordships that I know not have any thing in the World can be more plain, and therefore if in *Parliament* ye should make any doubt of that which is so fully confirmed in *Parliament*, and in case so clear, go about by new glosses to alter the old and good Law, we shall not onely forsake the steps of our Ancestors, who in Cases of small importance would answer *nolumus mutare leges Anglia*, but we shall yield up and betray our right in the greatest inheritance the Subjects of *England* hath, and that is the Laws of *England*, and truly I wonder how any man can admit of such a gloss upon the plain Text, as should overthrow the force of the Law, for whereas the Law of *Magna Charta* is, that no Free-man shall be imprisoned, but by lawfull judgement of his Peers, or the Law of the Land, the *King* hath power to commit without Cause, which is a sence not onely expressly contrary to other Acts of Parliament, and those especially formerly cited, but against Common sence. For Mr. *Attorney* confesseth this Law concerns the *King*, why then, where the Law saith the *King* shall not commit, but by the Law of the Land: the meaning must be as Mr. *Attorney* would have it, that the *King* must not commit, but at his own pleasure, and shall we think that our Ancestors were so foolish to hazard their Persons & Estates, and labour so much to get a Law, and to have it 30. times confirmed, that the *King* might not commit his Subjects, but at his own pleasure, and if he did commit any of his Subjects without a Cause shewen, then he must lie during pleasure, then which nothing can be imagined more ridiculous and contrary to true reason.

For the Presidents I observe that there hath been many shewen, by which it appears to me evidently that such as have been committed by the *Kings* Council, they have been delivered upon *Habeas Corpus*, and that constantly. It is true that some Presidents were brought on the *Kings* part, that when some of these persons desired to be delivered by *Habeas Corpus*, the *King*, or his Council signified his Majesties pleasure that they should be delivered, or the *Kings Attorney* hath come into the Court and related the *Kings* Command, but this seems to make for the Subject; For that being in his Majesties power to deliver them, who by his special Command were imprisoned. May not we well think that his Majesty would rather at that time have stayed their deliverance by Law, then furthered it with his Letters, and made the Prisoners rather beholding to him for his grace and mercy then to the Judges for Justice, had not his Majesty known that at that time they ought to have been delivered by Law? I think no man would imagine a wise *King* would have suffered his Grace and Prerogative (if any such Prerogative were) to be so continually questioned, and his Majesty and his Council so far from commanding the Judges not to proceed to deliver the Prisoner by them committed, without Cause shewn, as that on the other side, which is all the force of these  
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Presidents, the *King* and the Council signified to the Judges that they should proceed to deliver the parties, certainly if the *King* had challenged any such Prerogative, that a Person committed without any cause shewn ought not to be delivered by the Judges without his consent, it would have appeared by one President, or other amongst all that have been produced, that his Majesty would have made some claim to such a Prerogative. But it appears to the contrary that in many of these cases the *King*, or his Council did never interpose, and where they did, it was alwayes in affirmation and encouragement to that Court to proceed. And besides the writing of Letters from his Majesty to the Judges to do Justice to his Majesties Subjects, may with as good reason be interpreted that without those Letters they might not do Justice, also the *King* signified his willingness, that such & such Persons which were committed by him should be delivered, therefore they could not be delivered without it, which is a strange reason. So that findeing the Laws so full, so many, and so plain in the point, and findeing that when ever any were committed without cause shewn, brought their *Habeas Corpus*, they were delivered, and no Command ever given to the contrary, or claim made on the *Kings* part to any such Prerogative. I may safely conclude as the House of Commons have done, and if any one President, or two of late can be shewn that the Judges have not delivered the Prisoners so committed, I think it is their fault, and to be enquired of, but contrary, it seems to me to be an undoubted Liberty of the Subject, that if he be committed without cause, or without cause shewn, yet he may have some speedy course to bring himself to Trial, either to justify his own innocencie, or to receive punishment according to his fault, for God forbid that an innocent man by the Laws of *England* should be put in worse case then the most grievous Malefactors are, which must needs be, if this should be, that if a cause be shewed, he may have his Trial, but if none, he must lie and pine in Prison during pleasure. Mr. *Serjeant Ashley*, the other day told your Lordships of the Embleme of a *King*, but by his leave made wrong use of it. For a *King* bears in one hand the Globe, and in the other the golden Scepter the types of Sovereignty and mercie, but the Sword of Justice is ever carried before him by a Minister of Justice, which shews Subjects may have their remedies for unjustice done, and appeals done to higher powers, for the Laws of *England* are so favourable to their Princes, as they can do no unjustice.

Therefore I will conclude as all disputes I hold do, *Magna est veritas & praevalabit*, so I make no doubt we living under so good a Prince as we do, when this is represented unto him, he will answer us *Magna est Carta & praevalabit*.

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The ARCH-BISHOPS of CANTER-  
BURIES Speech, at the Conference  
of both Houses, 25. April 1628.

Gentlemen of the House of Commons, the service of the *King* and safety of the Kingdom do call on us, my Lords, to give all convenient expedition to dispatch some of those great and weighty businesses, for the better effecting whereof, my Lords have thought fit to let you know that they do in general agree with you, and doubt not, but you will agree with us to the best of your power to maintain and support the fundamental Laws of the Kingdom, and the fundamental Liberties of the Subject, for the particulars which may hereafter fall in debate, they have given me in charge to let you know, that what hath been presented by you to their Lordships, they have laid nothing of it by, they are not out of love with any thing you have tendered to them, they have voted nothing, neither are they in love with any thing proceeding from themselves, for that which we shall say and propose unto you is out of an intendment to invite you to a mutual and free conference, that you with confidence may come to us, and we with confidence may speak to you, so that we may come to a conclusion of those things which we both unanimously desire, we have resolved of nothing, defined, or determined nothing, but desire to take you with us, praying help of you as you have done of us. My Lords have thought upon some Propositions which they have ordered to be read here, and then left with you in writing, that if it seem good to you, we may uniformly concur for the substance, and if you differ, that you may be pleased to put out, or add, or alter, or diminish as you shall think fit, that so we the better come to the end, that we do both so desirously embrace.

Then the 5. Propositions were read by the Lord  
BISHOP of NORVVICH.

The 5. Propositions, 25. April 1628.

1. **T**hat his Majesty would be pleased graciously to declare, that the good old Law, called *Magna Charta*, and the 6. Statutes conceived to be Declarations, or Explanations of that Law, do stand still in Force to all intents and purposes.

2. That his Majesty would be pleased graciously to declare, that according to *Magna Charta* and the Statutes aforesaid, as also accord-



ing to the most ancient Customes and Laws of this Land, every free Subject of this Realm hath a fundamental propriety in his good, and a fundamental Liberty of his Person.

3. That his Majesty would be pleased graciously to declare, that it is his Royal pleasure to ratifie and confirm unto all, and every his faithfull and Loyal Subjects all their antient, severall, just Liberties, Priviledges and Rights, in as ample and beneficial manner to all intents and purposes, as their Ancestors did enjoy the same, under the Government of the best of his most Noble Progenitors.

4. That his Majesty would be pleased graciously to declare, for the good contentment of his Loyal Subjects, and for the securing them from future fears, that in all causes within the Cognizance of the Common-Law, and concerning the Liberty of his Subjects, his Majesty would proceed according to the Laws established in the Kingdom, and in no other manner or wise.

5. And as touching his Majesties Royal Prerogative intrincical to his Sovereignty, and intrusted him from God *ad communem totius populi salutem & non ad destructionem*, his Majesty would resolve not to use or divert the same to the prejudice of any his loyal People in the propriety of their goods and liberty of their Persons. And in case for the security of his Majesties Royal Person, the Common safety of his People, or the peaceable Government of his Kingdom, his Majesty shall finde just cause of State to imprison, or restrain any mans Person: his Majesty would graciously declare, that within a convenient time he shall and will expresse the cause of his commitment, or restraint, either general, or special, and upon a cause so expressed, will leave him immediatly to be tried according to the Common Justice of the Kingdom.

Then Sr. DUDLEY DIGGS in the behalf of  
the Commons, saith.

**M**Y Lords, it hath pleased Almighty God many wayes to bless the Knights, Citizens, and Burgeses now assembled in Parliament, with great comforts and strong hopes, that this will prove as happy a Parliament as ever was in *England*, and in their Consultations for the service of his Majesty, and the safety of this Kingdom, one especial comfort and strong hope hath risen from the continued good respects, which your Lordships so nobly from time to time have been pleased to shew unto them particularly at this present in your so Honourable profession to agree with them in general, in desire to maintain and support the fundamental Laws and Liberties of *England*. The Commons have commanded me in like sort, they have been, are, and will be as ready to propugne the just Prerogatives of his Majesty, of which in all their Arguments, searches of Records and resolutions,

solutions, they have been most carefull according to that which formerly was, and now again is protested by them.

Another Noble Argument of your Honourable disposition towards them is exprest in this, that you are pleased to expect no present answer from them, who are (as your Lordships in your general wisdoms they doubt not have considered) a great body that must advise upon all new Propositions, and resolve upon them before they can give answer according to the ancient usage of our House, but is manifest in general (God be thanked for it) there is a great concurrence of affection to the same end in both Houses, and such a good Harmony, that I intreat your Lordships leave to borrow a comparison from nature, or natural Philosophy, as two Lutes well strung and tun'd brought together, if one be plaid on little straws, or sticks will stir upon the other though it lye still, so though we have no power to reply, yet these things said and proposed, cannot but work in our hearts, and we will faithfully report these passages to our House, from whence in due time we hope your Lordships shall receive a contentfull Answer.

Sr. BENJAMIN RUDDIERDS Speech,  
28. April 1628.

Mr. Speaker,

**W**E are now upon a great business, and the manner of handling it may be as great as the business it self. I need not tell you that Liberty is a pretious thing, for every man may set his own price upon it, and he that doth not value it, deserves to be valued accordingly, for my own part I am clear without scruple, that, what we have resolved it according to Law, and if any Judge in *England* were of a contrary opinion, I am sure we should have heard of him before now. Out of all question the very point, the scope and drift of *Magna Charta* was to reduce the Regal to a Legal power in matters of imprisonment, or else it had not been worth so much contending for.

But there have been Presidents brought to prove the practise and interpretation of the Law. I confess I have heard many Presidents of utility and respect, but none at all of truth, or of Law: Certainly there is no Court of Justice in *England* that will discharge a Prisoner committed by the *King Rege inconsulto*, without acquainting the *King*; yet this good manners was never made, or mentioned as a legal part of the delivery.

It is Objected, that the *King* ought to have a trust left and deposited in him, God forbid, but he should: And I say that it is impossible to take it from him, for it lies not in the wit of man, to devise such a Law as should be able to comprehend all particulers, all accidents, but that extraordinary cases must happen, which when they come, If



they be disposed of for the Common good, there will be no Law against them, yet must the Law be general, for otherwise admissions and exceptions will fret, and eat out the Law to nothing. God himself hath constituted a general Law of nature to govern the ordinary course of things, he hath made no Laws for miracles. Yet there is this observation of them, that they are rather *prater naturam* than *contra naturam*, and alwayes *propter bonos fines*, for Kings Prerogatives are rather besides the Law then against it, and when they are directed to right ends for the publick good, they are not onely concurring Laws, but even Laws in singularity and excelling. But to come nearer Mr. *Speaker* let us consider where we are now, what steps we have gone and gained, the Kings learned Council have acknowledged all the Laws to have been still in force, the Judges have disallowed any Judgement against these Laws, the Lords also have confessed, that the Laws are in full strength; they have further retained our resolution intire, and without prejudice: All this hitherto is for our advantage, but above all his Majesty himself being publicly present declared by the mouth of my Lord *Keeper* before both the Houses, that *Magna Charta*, and the other six Statutes are in force, that he will maintain his Subjects in the liberty of their Persons and the propriety of their goods, that he will govern according to the Laws of the Kingdom, this is a solemne and bindeing satisfaction expressing his gracious readines to comply with his People in all their reasonable and just desires. The King is a good man, and it is no diminution to be called so, for whosoever is a good man shall be greater then a King that is not so.

The King certainly is exceeding tender of his present Honour and of his fame hereafter, he will think it hard to have a worse mark set upon him and his Government then any of his Ancestors by extraordinary restraints: his Majesty hath already intimated unto us by a message that he doth willingly give way to have the abuse of power reformed, by which I do verily believe that he doth very well understand what a miserable power it is, which hath produced so much weakness to himself and to the Kingdom, and it is our happiness that he is so foreward to redress it. For my own part I shall be very glad to see that good old decrepit Law of *Magna Charta*, which hath so long kept in and lain as it were bedrid, I should be glad, I say to see it walk abroad again with new vigour and lustre attended by the other six Statutes, questionless it will be a general hartning to all the People. I doubt not but by a debating conference with the Lords we shall happily fall upon a fair and fit accommodation concerning the Liberty of our Persons and propriety of our goods. I hope we have a Bill to agree in the point against imprisonment for Loanes, or privy Seals, as for intrincical power and reason of State they are matters in the clouds, where I desire we may leave them, and not meddle in them at all, least by way of admittance we may loose somewhat of that which is  
our

our own already. Yet this (by the way) I will say of reason of State, that in the latitude (as it is used) it hath eaten out almost not onely all the Laws, but all the Religion of Christendom. Now Mr. *Speaker*, I will onely remember you of one precept, and that of the wisest *Man*, *Be not overwise, be not over just*, and he cited his reason *for why wilt thou be desolate*. Sir, if Justice and Wisdom may be stretcht to desolation, let us thereby learn, that moderation is the virtue of virtues, and the wisdom of wisdoms.

Let it be our Master-piece, so to carry our business as we may keep Parliaments on foot, for as long as they are frequent there will be no irregular power, which though it cannot be broken at once, yet in short time it will fade and moulder away, there can be no total and final loss of Liberty, but by loss of Parliaments as long as they last, what we cannot get at one time we may have at another.

Let no man think that what I have said is the language of a private end, my aim is upon the good success of the whole, for I thank God my minde stands above any fortune that is to be gotten by base and unworthy means.

No man is bound to be rich, or great, no, nor to be wise, but every man is bound to be honest, out of which heart I have spoken.

## The Lord KEEPER S speech, 28. April 1628.

**M**Y Lords, Knights, and Burgeses of the House of Commons. I cannot but remember the great and important affairs concerning the safety, both of State and Religion, declared at first from his own mouth to be the cause of assembling this Parliament, the fear whereof, as it doth dayly increase with his Majesty so it ought to do, and his Majesty doubts not but it doth so with you, since the danger encreaseth every day both by effluion of time, and preparation of the enemy. Yet his Majesty doth well weigh, that this expence of time hath been occasion by the debate that hath risen in both Houses, touching the Liberty of both Subjects, in which as his Majesty takes in good part the purpose and intent of the Houses so clearly and frequently professed, that they would not deminish nor blemish his Royal and just Prerogative, so he presumes ye will all confesse it a point of extraordinary grace and Justice in him to suffer it to rest so long in dispute without interruption. But now his Majesty considering the length of time which it hath already taken, and fearing nothing so much any future loss as that whereof every hour and minute is so precious, and foreseeing that ordinary way of debate though never so carefull, must in regard of the forms of both Houses necessarily take up more time then the affairs of Christendom can permit, his Majesty out of his great and Princely care hath thought it expedient



dient to shorten the business by declaring the clearness of his own heart and intention. And therefore he hath commanded me to let you know, that he holds the Statute of *Magna Charta*, and the other 6. Statutes, insisted on for the Subjects Liberty, to be all in force, and assureth you that he will maintain all his Subjects in the just freedom of their Persons and in safety of their estates, and that he will Govern according to the Laws and Statutes of the *Realm*, and that you shall finde as much security in his Majesties Royal word and promise, as in the strength of any Law you can make, so that hereafter you shall never have cause to complain. The conclusion is this, that his Majesty prayeth that God (who hath hitherto blessed this Kingdom, and hath put into his heart this day to come unto you) will make the success hereof happy both to *King* and People. And therefore he desireth that no doubt, or mistrust may possesse any man, but that you all will proceed speedily and unanimously with the business.

## The Bishop of ExceTers Letter sent to the House of Commons, 28. April 1628.

*Gentlemen,*

**F**Or God sake be wise in your well meant Zeal, why do you argue away precious time that can never be revoked, or repaired? Woe is me, while we dispute our friends perish and we must follow them, where are we, if we break, (and I tremble to think) we cannot but break if we hold so stiff. Our Liberties and proprieties are sufficiently declared to be sure and legal, our remedies are clear and irrefragable, what do we fear, every Subject sees the way now chalked out, for future Justice, and who dares henceforth tread besides it? Certainly whilest Parliaments live we need not misdoubt the violations of our Freedoms and Rights: May we be but where the Law found us, we shall sufficiently enjoy our selves and ours; It is no season to search for more! Oh let us not whilest we over-rigedly plead for an higher strain of safety, put our selves into a necessity of ruine and utter despair of redress: Let us not in the suspicion of *Evils* that may be, cast our selves into a present confusion. If you love your selves and your Countrey, remit some thing of your own terms, and since the substance is yielded by your Noble *Patriots*, stand not too rigorously upon points of circumstance: Fear not to trust a good *King*, who after the strict Laws made, must be trusted with the execution. Think that your Countrey, nay Christendom lies on the mercie of your present resolutions. Relent or farewell welfare.

*From him whose faithfull heart bleeds in a vowed sacrifice for  
his King and Countrey.*

E X C E T E R S.

Mr. HACK-

Mr. HACK VVELL of LINCOLNS-INNE  
his Speech in the Lower-House,  
1. May 1628.

SIR,

I Chose rather to discover my weakness by speaking, then to betray my conscience by silence: My opinion is, that we shall do well totally to omit our resolution out of this Bill, and rely onely upon a confirmation of the Laws.

The Objections made against this Opinion  
are two.

THE first is, that we shall thereby recede from our own resolution.

The second, that by a bare confirmation of the Old Laws without the inserting of our resolution, by way of explanation, we shall be but in the same case as before.

For the first, that though we desire onely a confirmation without adding of our resolution, we do not thereby recede from our resolution, I reason thus:

Our resolution was drawn out of the sence of those Laws, which are now desired to be confirmed, so that no question can be made by any of us that have thus declared our selves, but that our resolution is virtually contained in those Laws, if that be so, how can our acceptance of a confirmation of these Laws be a departure from our resolution.

Nay, rather we think the contrary is true, he that doubts, that by confirmation of these Laws our resolution is not hereby confirmed, doubts whether we have justly deduced our resolutions out of those Laws, and so calls our resolution into question.

This Argument alone is in my opinion a full answer to that first Objection, that in desiring of a bare confirmation of those Laws we depart from our resolutions. This Argument alone is in my opinion a full answer to that first Objection: that in desiring of a bare confirmation of these Laws, we depart from our resolution.

The second Objection is: that if we have nothing but a confirmation, we are in no better case then we were before those late violations of the Law.

This I deny, and do confidently affirm, that although we have no more then a confirmation of those Laws which are recited in the Bill that is now before us, we shall depart hence in far better case then we came, and that in divers respects.

First,



First, some of the Laws recited in this Bill, and desired to be confirmed are not printed Laws, and are known to few Professors of the Law, and much less to others, and yet they are Laws of as great consequence for the liberty of the Subject, if not of greater then any that are printed, as namely 25. E. 3. N<sup>o</sup>. 1. That loanes against the will of the lender are against reason and the freedom of the Realm, 36. E. 3. N<sup>o</sup>. 9. By which imprisonments by special commandment without due Process are forbidden. These two are not printed.

The excellent Law *de tollagio non Concedendo* in print hath in a publick Court been by a great Councillour said to be but a *Charter*, and no Law.

The Satute 1. *Rich. 3.* against benevolences is by some opinions in print an absolute Law, if we can get all these goods Laws besides those 6. other, which are expositions of *Magna Charta* in the point of the freedom, and our Persons to be confirmed and put in one Law to the easie view of all men, is not our Case far better then when we came hither?

Secondly, will not the occasion of the making of this Law of confirmation so notoriously known be transmitted to all posterity, certainly it will never be forgotten, that the occasion thereof was the imprisonment of those worthy Gentlemen for not lending, and the resolution in the *Kings-bench* in denying to bayl them, and is not the occasion of the making of a Law a good rule to expound it. If so, then by giving a confirmation upon this occasion we have bettered our Case very much.

Thirdly, have not the Judges in the *Kings-bench* in open Parliament upon our complaint disclaimed to have given any Judgement in the point? which generally before by the Parliament was otherwise conceived, for now they say, it was but an Award and no Judgement, Will such a Notorious Act upon so important an occasion in so publick a place be quickly forgotten? Nay, will not the memorie of it for ever remain upon Records, is not our Case then much better then when we came hither.

Fourthly, will not the resolution of this House, and all our Arguments and reasons against imprisonment without a Cause expressed (which no doubt by the course we have taken will be transferred to posterity) be a great means to stay any Judge hereafter for declaring any Judgement to the contrary, especially if there be likelihood of a Parliament, is not our Case in this very much amended?

Lastly, have we not received Propositions from the Lords, wherein (amongst other things) they declared, that they are not out of love with our proceedings, is not this a great strenghtning to it? but after so long debate amongst them about it, they cannot take any just exception to it; and doth not this also much amend our Case?

From all these reasons, I conclude that the second Objection, that by a confirmation we are in no better case then when we came together, is also a weak Objection.

Now

Now for reasons to move us to proceed in this course of accepting a confirmation. First we have his Majesties gracious promise to yield to a confirmation of the old Laws, from which we may rest most assured he will not depart, If we tender him with all our Proposition to be enacted, we have cause to doubt that we shall loose both the one and the other.

Secondly, we are no less assured of the Lords joyning with us, for in their Propositions sent to us they have delivered themselves to that purpose: This is then a secure way of getting somewhat of great advantage to us, as we have great hopes, and in a manner assurance on this side: So on the other side we have great doubts and fears, that by offering our resolution to be enacted, we shall loose all.

For first we have had already experience of the Lords, that they are not very foreward to joyn with us in a Declaration of our Proposition to be Law, If they stumble at a Declaration, much more will they in yielding to make Law in the same point.

And have we not much more cause to doubt that his Majesty will not yield unto it, seeing it toucheth him so near, Is it not the notice of his pleasure that hath wrought thus with the Lords?

If we should clog our Bill with our Proposition, and it should be rejected by the Lords, or by the *King*, is not our resolution much weakened by it? And are we not then in far worse case then before we made it? Our resolution for the rejecting of our Proposition, will tend to a Justification of all that hath been done against us in this great point of our Liberty.

*Let us then like wise-men conform our desire to our hopes, and guide our hopes by probabilities, other desires and other hopes are but vain.*

This is my poor opinion in this weighty business.

## Secretary COKE'S Message, 1. May 1628.

Mr. Speaker,

**I** Have a very short message to deliver from his Majesty, that shews both his Royal care to be rightly understood of this House, and no less care to understand us in the best part, and to shew clearly it shall not be his fault if this be not a happy Parliament: His Majesty hath commanded me to desire this House clearly to let him know, whether they will rest upon his Royal word and promise, made at several times, and especially by my Lord *Keepers* Speech made in his own presence, which if they do, he doth assure you that it shall be royally and really performed.

F f

After



After speaking of himself, and the nature of his place under his Majesty, he proceeded in these words.

**G**Ive me leave freely to tell you that I know by experience, that by the place I hold under his Majesty, if I will discharge the duty of my place and the Oath I have taken to his Majesty, I must commit, and neither express the cause to the Jaylor, nor to the Judges, nor to any Councillour in *England*, but to the *King* himself, yet do not think I go without ground of reason, or take this power committed to me to be unlimitted, Yea rather it is to me a charge, burthen, and danger, for if I by this power shall commit the poorest porter, if I do it not upon a just cause, if it may appear, the burthen will fall upon me heavier then the Law can inflict, for I shall loose my credit with his Majesty and my place. And I beseech you consider whether those that have been in the same place have not committed freely, and not any doubt made of it, nor any complaint made by the Subject.

Veneris, 2. May 1628.

**A** Report was this day made from the grand Committee, for grievances concerning the cause of *Nicholas Clegat* Cittizen, and Vintner of *London*, imprisoned by the Lord Major and Aldermen of the said Citie, for refusing to lend a certain summe of money assessed upon him by the Company of Vintners of *London*, whereof he is free, towards the proportion of money imposed upon the Company, by an Act of Common-Council of the said Citie, in pursuance of a contract of Land with his Majesty. By which report it appeared that the said grand Committee had unanimously agreed that the said Citie might make Acts of Council, so as they were consonant to Law and reason, and for regulating and deciphering of trade agreeable to reason and the Law of the Realm, and might leavy money of the Cittizens by Act of Common-Council for building, or repairing of their Walls, Gates, or making or cleansing of Sewers, or other like causes tending to the general and publick good, and welfare of the Citie, or towards Triumphs, or other like occasions tending to the Honour of the Citie in general, but could not by such Act of Common-Council tax, or leavy money towards the purchasing of Lands, or other like occasions forreign to the government of the Citie. Whereupon it is resolved by the House of Commons *super totam materiam* that the said Commitment of the said *Nicholas Clegat* was unlawfull, and that a Petition should go from the House to his Majesty for the enlargement of the said *Nicholas Clegat* his commitment by the Lord Major and Aldermen, being since strengthened by special command.

Henry

Henry T O M P S O N one of the Shrieffs, and  
Robert H E N I S V V O R T H Alderman of  
the Citie of Y O R K their submission for  
their indirect chusing of Sr. Thomas  
S A V I L Knight.

**I** Henry *Tompson* one of the Shrieffs of the Citie of *York*, do hereby acknowledge to have offended the Lord Major and all the Cominalty of the Citie, by the undue pronouncing and return of Sr. *Thomas Savil* Knight, to be one of the Cittizens to serve in this Parliament for the said Citie, whereas I ought of right to have pronounced, and returned in his place Mr. *Thomas Royle*, Alderman of the said Citie, I am hartily sorry for my said offence and misdemeanour, and crave pardon of my Lord Major and all the Cominalty, and in particuler of the said Alderman *Hoyle* for the same.

**I** Robert *Henisworth* Alderman of the Citie of *York*, do acknowledge that I have offended the Lord Major and all the Cominalty of of the said Citie, by my undue preparing and practising the election of Sr. *Thomas Savill* Knight, to be chosen one of the Cittizens for the said Cittie of *York* to serve in this present Parliament, I am hartily sorry for my said offence, and do desire my Lord Major and all the said Cominalty to pardon me for the same.

Propositions drawn for the defence of this  
Kingdom, and the annoyance of the ene-  
mies of the same by Sea.

**T**hat every Shire in *England* shall be injoynd on the charge of the Countrey, to set forth one Ship well maned and victualled for 7. Moneths, and to be of the burthen of 500, 300, or 140. Tuns at the least, according to the ability of the Shire in the opinion of the State.

That every Port, or Sea-Town according to their abillity, be injoynd to do the like. *London* may well furnish 10. *Bristol* 3. and the rest according to their abillity. And such of the Sea-Towns as are not of abillity to set forth Ships of the burthen aforesaid, to furnish out Pinnaces of 60, or 80, Tuns, for Light-Horsmen, or Intelligencers. Those Ships will amount to 80. Sail and above, and these to be divided into 4. Squadrons: adjoyning unto every Squadron one of the *Kings* Ships for their Admiral.



The first Squadron to lye off, and on the Western Ilands, and as high as the *Cavaries* for *Braße* men, the *Caracks* and the Plate-Fleet, and all other trading that way.

The second Squadron to lye of the Southern Cape, and so low as the *Groyne*, for all such shipping as shall go in or out of *Spain*, or *Portugal*; and if occasion require, to joyn with the former Squadron.

The third Squadron to lye of between the *Groyne* and the mouth of the *Sleve* or *Sylly*, to stop such shipping as trade into those Coasts.

The fourth Squadron to keep the *Narrow Seas*, to awe the *Dunkerkers*, to take all the *French* trade, and so Northward, and this Squadron to be still relieved with fresh Ships, as the other shall grow foul, or come to any misfortune; so as this Squadron may continually keep the *Seas* most part of the year.

That no Master of these Ships be owner, or have any part in her that he goeth in Master of, for they will be unwilling to bring their Ship in fight or danger, and use many tricks and devices, especially if there be an ignorant Captain. Therefore it is expedient likewise, that every Shire should nominate a Captain for the Ship that they furnish out, for the avoiding of ignorant and insufficient Captains.

That in *London*, *Parismouth*, or elsewhere, where the State shall think fit, there be Store-houses appointed for the receipt of such Prizes as shall be taken by any of the 4. Squadrons.

That every County or Sea-Town, that furnisheth the said shipping, may nominate and have a Master of their own free election, that may have power in the behalf of the Counties and Sea-Towns, as the other Officers that shall be appointed for the *King*, for the opening of decks of the Prizes, receiving the goods into the said Store-houses, and for the dividing and disposing them according.

That what Prizes any of the 4. Squadrons shall take, be brought into one of the Port-Towns where those Store-houses are appointed, and the benefit of all Prizes, what Squadron soever of the 4. sendeth them in, be divided (the *Kings* part being deducted) to the several Counties and Sea-Towns of the Kingdom, according to the burthen of their shipping, and not particularly to such Counties, or Sea-Towns, unto which the Squadron of Ships belongeth that shall send in the said Prizes.

That it shall not be Lawfull for any in the said Ships, to break, take, or open the deck of any Prizes they take, but nail them down fast, untill they be brought in at one of the Port-Towns aforesaid, and the Officers for the *King* with the Commissioners for the Counties, to take and open them.

That after the *Kings* part is sequestred, with such allowance over and above as shall be proportionable for the *Kings* ships, being Admirals, the rest to be distributed as aforesaid to the use and benefit of all the Counties and Sea-Towns in general, & not in particuler to such Counties and Sea-Towns unto which any of the said 4. Squadrons be-

belongeth that sendeth in the said Prizes, the Pillage above deck onely excepted, which do belong unto the Officers, Saylors, and Souldiers of the Squadron that took the said Prize.

That for the speedy and present execution hereof, every County or Sea-Town that is not furnished with shipping accordingly shall hire untill they can build, which to be limitted to perform within a certain and convenient time.

The charge that will fall on the Subjects yearly, will amount for the first year 200000. *l.* which (God prospering them) within the year they will re-inburse, and by the benefit of the Prizes afterwards they will have stock sufficient, with increase for new victualling forth the Ships the first year, and so from time to time. The Kingdom will hereby encrease their shipping, breed, and make good store of good Sea-men, and we shall hereby be Masters of the Sea, so as our Merchants shall travel safely, and we shall much prejudice the *French* and *Spanish* Nation, or any others that are Enemies, and not in League.

Judge ANDERSON.

**D***iverse Persons fueront Commis a several temps a several Persons sur pleasur sans bon cause, partie de quex estiant amesnes en en bank le Roy, & partie en le Comune bank fueront accordant a la ley de la terre mise a large & discharge de le inprisonment par que aschuns grands fueront offensus & procure un comandment a les Judges que ils ne ferra issent apres Ceo nient meins les Judges ne surcease mas par advise enter eux ils fesoient certanie Articles le tenour de quex ensue & deliver eux al seigneures Chauncellor & Treasurer & eux subscribe ou tous leur manies, les Articles sont coe ensuont.*

**W**HER Majesties Justices of both Benches and Barons of the Exchequer, desire your Lordships that by some good means some order may be taken, that her Highness Subjects may not be committed, or detained in Prison by commandment of any Noble Man, or Councillor against the Laws of the Realm, either help us to have access to her Majesty to the end to become suitors to her for the same, for divers have been imprisoned for suing ordinary Actions and Statutes at the Common-Law, untill they have been constrained to leave the same against their wills, and put the same to order, albeit Judgement and Execution have been had therein to their great losses and griefs, for the aid of which Persons, her Majesties Writs have sundry times been directed to divers Persons, having the custody of such Persons unlawfully imprisoned, upon which Writs no good, or Lawfull cause of imprisonment hath been returned or certified, where-



upon according to the Laws they have been again committed to Prison in secret places, and not to any common ordinary Prison, or Lawfull Officer, as Shrieff, or other lawfully authorized to have, or keep a Goal, so that upon Lawfull complaint made for their delivery, the Queens Courts cannot learn to whom to direct her Majesties Writs, and by this means Justice cannot be done, and moreover, divers Officers and Serjeants of *London* have been many times committed to Prison for Lawfull executing of her Majesties Writ, sued forth of her Majesties Courts at *West-minster*, and thereby her Majesties Subjects and Officers are so terrified that they dare not sue, or execute her Majesties Laws, her Writs and Commandments. Divers others have been sent for by Pursevents, and brought to *London* from their dwellings by unlawfull imprisonment, have been constrained not onely to withdraw their Lawfull Suits, but have also been compelled to pay the Pursevents for bringing such Persons great summes of money. All which upon complaint the Judges are bound by Office and Oath to relieve and help, by and according to her Majesties Laws. And when it pleaseth your Lordships to will divers of us to set down in what cases a Prisoner sent to custody by her Majesty, her Councel, some one, or other, or two, are to be detained in Prison, and not to be delivered by her Majesties Court or Judges, we thinck, that if any Person be committed by her Majesties Command from her Person, or by order from the Councel board, or if any one, or two of her Councel commit one for high Treason, such Persons so in the cases before committed may not be delivered by any of her Courts without due Trial had: Nevertheless the Judges may Award the Queens Writ to bring the bodies of such Persons before them, and if upon return thereof, the causes of their commitment be certified to the Judges as it ought to be, then the Judges in the cases before ought not to deliver him, but to remaund the Prisoner to the place from whence he came.

Which cannot conveniently be done, unless notice of the cause in general, or else special be known to the Keeper, or Goaler that shall have the custody of such Prisoner. All the Judges and Barons did subscribe their names to these Articles. *Termino Pascha. 34. Eliz.* and sent one to the Lord *Chancellor*, and another to the Lord Treasurer, after which time there did follow more quietness then before in the cause afore mentioned.

The KINGS Message the 2. May, 1628.  
by Secretary COKE.

**H**IS Majesty hath commanded me to make known to this House, that howsoever we proceed with the business we have in hand, which he will not doubt, but to be according to our constant professions, and so as he may have cause to give us thanks, yet his resolution is, that both his royal care and his hearty and true affection towards all his loving Subjects, shall appear to the whole Kingdom and to all the World, that he will govern us according to the Laws and Customes of the Realm, that he will maintain us in the Liberties of our Persons and propriety of our goods, so as we may enjoy as much happiness as our Forefathers in their best times, and that he will rectifie what hath been, or may be amiss amongst us: so that there may be hereafter no just cause to complain, wherein as his Majesty will rank himself amongst the best of our *Kings*, and shew he hath no intention to invade, or impeach our Lawfull Liberties or Rights, so he will have us to match our selves with the best Subjects, by not inroaching upon that Sovereignty and Prerogative which God hath put into his hands for our good, and by containing our selves within the bounds and Laws of our Forefathers without streining, or enlarging them by new Explanations, Interpretations, Expositions, or Additions in any sort, which he clearly telleth us he will not give way unto. That the weight of the affairs of Christendom do press him more and more, and the time is now grown to that point of maturity, that it cannot indure long debate, or delay, so as this Session of Parliament must continue no longer then Tuesday come sevenight at the furthest, within which time his Majesty for his part will be ready to perform what he hath promised to us, and if we be not as forward to do that is fit for us, it shall be our own faults.

Lastly, upon the assurance of our good dispatch and correspondency, his Majesty declareth that his Royal intention is to have another Session at Michalmas next, for the perfecting of such things as cannot now be done.

Mr. MASON'S speech, 2. May 1628.

**I** Am of opinion with the Gentleman that spake first, that in our proceedings in the matter now in debate, we should have use of the Title of the Statute, called *circumspecte agatis*, for it concerns the Liberty of our Persons, without which we do not enjoy our lives.

The



*The Question is :*

**W**Hether in this Bill for the explanation of *Magna Charta*, and the rest of the Statutes, we shall provide that the cause of the commitment must be expressed upon the commitment, or upon the Return of the *Habeas Corpus*.

Before I speak to the question it self, I shall propose some observations in my conceit, necessarily conducing to the debate of the Matter.

1. That we ought to take care, and to provide for posterity as our Predecessors have done for us, and that this provident care, cannot be expounded to be any distrust of the performance of his Majesties gracious Declaration, this Act providing for perpetuity, to which his Highness promise, unless it were by Act of Parliament, cannot extend.

2. That we having long debated and solemnly resolved our Rights and Priviledges by virtue of these Statutes, and if now we shall reduce those Declarations and those resolutions into an Act, we must ever hereafter expect to be confined within the bounds of that Act being made at our Suit, and to be the limits of the Prerogative in in that respect, and it being an Act of explanation, which shall receive no further explanation then it self contains.

3. That by this Act we must provide a remedy against the Persons which detain us in Prison, for as to the Commander there can be no certain.

*Concerning the Question it self.*

**I**T hath been solemnly and clearly resolved by the House, that the commitment of a Freeman without expressing the cause at the time of the commitment, is against the Law: If by this Act of explanation we shall provide onely that the cause ought to be expressed upon the return of the *Habeas Corpus*, then out of the words of the Statute, it will necessarily be inferred, that before the return of the *Habeas Corpus* the cause need not to be expressed, because the Statute hath appointed the time of the expression of the cause, And it will be construed, that if the makers of the Statutes had intended that the cause should have been sooner shewen, they would have provided for it by the Act, and then the Act which we term an Act of explanation, will be an Act of the abridging of *Magna Charta*, and the rest of the Statutes: Or if this Act do not make the commitment without expressing the cause to be Lawfull, yet it will clearly amount to a tolleration of the commitment, without expressing the cause untill the *Habeas Corpus*, or to a general, or perpetual dispensation beginning with, and continuing as long as the Law it self. And in my understanding the words in this intended Law, that no Freeman can be committed without cause, can no wayes advantage us, or satisfie this Objection, for till the return

of the *Habeas Corpus*, he that commits is Judge of the cause, or at least hath a license by this Law till that time to conceal the cause, and the Goaler is not subject to any action for the detaining of the Prisoner upon such command, for if the Prisoner demanded the cause of his imprisonment of the Goaler, It will be a safe answer for him to say that he detains the Prisoner by Warrant, and that it belongs not unto him to desire those which commit the Prisoner to shew the cause untill he returns the *Habeas Corpus*, and if the Prisoner be a Suitor to know the cause from those that committed him, it will be a sufficient answer for them to say they will express the cause at the Return of the *Habeas Corpus*. In this cause there will be a wrong, because the commitment is without cause expressed, and one that suffers that wrong, *viz.* the party imprisoned, and yet no such wrong doer, but may excuse if not justify himself by this Law.

In making of Laws we must consider the inconveniences which may ensue, and provide for the prevention of them *lex caveat de futuris*. I have taken into my thoughts some inconveniences which I shall expose to your considerations, not imagining that they can happen in the time of our gracious Sovereign, but in an Act of Parliament, we must provide for the prevention of all inconveniences in future times.

1. If a man be in danger to be imprisoned in the beginning of a long vacation for refusing to pay some small summe of money, and knows that by this Act he can have no enlargement till the Return of the *Habeas Corpus* in the Term, and that the charge of his being in Prison, and of his enlargement by *Habeas Corpus* will amount to more then the summe, he will depart with money to prevent his imprisonment, or to redeem himself thence, because he cannot say any man doth him wrong, untill the Return of the *Habeas Corpus*, & the Law resolves a man will pay a Fine rather then be imprisoned, for the Judgment which is given when one is fined, is *Ideo Capiatur*, and the highest execution for debt is a *Capias ad satisfaciendum*, the Law presuming any man will depart with his money to gain his Liberty, and if the Prisoner procure an *Habeas Corpus*, and be brought into the *Kings-bench* by virtue of it, yet the cause need not to be then expressed: The provision of this Law, being that if no cause be then expressed he shall be bayled, and no cause being shewen upon the Return of the *Habeas Corpus*, yet may be pretended that at the time of his Commitment, there were strong presumptions of some great offence, But upon examination they are cleared, or it may be said that the offence was of that nature, that the time of his imprisonment before the Return was a sufficient punishment, and we may be frequently imprisoned in this manner, and never understand the cause, and have often such punishment, and have no means to justify our selves, and for all these proceedings this Law will be the justification, or colour.

2. If by this Act there be a Tolleration of imprisonment without shewing cause untill the Return of the *Habeas Corpus*, yet it is possible



to accompany that imprisonment, with such circumstances of close restraint, and others which I forbear to express, as may make an imprisonment for that short time as great a punishment, as a perpetual imprisonment in our ordinary manner.

3. The party may be imprisoned a long time before he shall come to be delivered by this Law, The place of his imprisonment may be in the furthest parts of this Kingdom, The Judges always makes the Return of the *Habeas Corpus* answerable to the distance of the Prison from *Westminster*, The Goaler may neglect the Return of the first Process, and then the party must procure an *alias*, and the Goaler may be then in some other imployment for the *King*, and excuse the not returning of the body upon that Process, and this may make the imprisonment for a year, and in the end no cause being returned, the party may be discharged, but in the mean time he shall have imprisonment, he shall never know the cause, he shall have no remedy for it, nor be able to question any for injustice, which have not a justification, or excuse by this Law.

4. The party may be imprisoned during his life, and yet there shall be no cause ever shewn. I will instance in the manner, a man may be committed to the furthest part of the Kingdom Westward, he obtains an *Habeas Corpus*, Before the Goaler receives the *Habeas Corpus* or before he returns it, the Prisoner by Warrant is removed from that Prison to another, it may be the furthest Northern part of the Realm, the first Goaler returns the special Matter which will be sufficient to free himself, and in like manner the Prisoner may be translated from one Prison to another, and his whole life shall be a peregrination, or wayfaring from one Goal to another, and he shall never know the cause nor be able to complain of any who cannot defend their actions by this Bill.

5. If the Prisoner be brought into the Court by *Habeas Corpus* and no cause expressed, and thereupon he be enlarged, he may be partly committed again, and then his enlargement shall onely make way for his commitment, and this may continue during his life, and he shall never know the cause, and this not remedied, but rather permitted by this Act.

And there are also considerable in this Matter, the expence of the party in Prison: His Fees to the Goaler, his costs in obtaining and prosecuting an *Habeas Corpus*, and his charges in removing himself, attended with such as have the charge of his conduct, and that the Prisoner must sustain all without satisfaction, or knowing the cause.

The onely reason given by those of the other opinion. That it is requisite, the *King* and Council should have power to command the detainer of a man in Prison for sometime without expressing the cause, is because it is supposed that the manifestation of the cause at first may prevent the discovery of a Treason. The reason is answered by the remedy proposed, by this Act it being proposed that it shall be provided

vided by this Bill, that upon our commitment we may have instantly recourse to the Chancery for an *Habeas Corpus* retornable in that Court, which is alwayes open, that partly upon the receipt thereof, the Writ must be returned and the cause thereupon expressed. If then this remedy be really the cause of commitment, must partly appear, which contradicts the former reason of State.

And in my own opinion we ought not onely to take care that the Subject should be delivered out of Prison, but to prevent his imprisonment, The Statute of *Magna Charta*, and the rest of the Acts providing that no man should be imprisoned, but by the Law of the Land. And although the *King*, or Councel, as it hath been objected, by might may commit us without cause, notwithstanding any Laws we can make. Yet I am sure without such an Act of Parliament, such commitment can have no Legal colour, and I would be loath we should make a Law to endanger our selves, for which reasons I conceive that there being so many wayes to evade from this Act, we shall be in worse case by it then without it, providing no remedy to prevent our imprisonment without expressing the cause to be Lawfull, and administers excuses for continuing us in Prison as I have before declared, and thus for providing for one particuler out of reason of State, which possibly may fall out in an age or two, we shall spring a leak which may sinck all our Liberties, and open a gap through which *Magna Charta* and the rest of the Statutes may issue out and vanish. I therefore conclude that in my poor understanding (which I submit to better Judgements,) I had rather depend upon our former resolutions, and the *Kings* gracious Declarations then to pass an Act in such manner as hath been proposed.

## The Speakers speech to his MAJESTY in the Bancketting-House, 5. May 1628.

*Most gracious and dread Sovereign,*

**Y**Our Loyal and dutifull Subjects, the Commons assembled in Parliament (by several Messages from your Majesty, especially by that your most Royal Declaration delivered by the Lord *Keeper* before both Houses) have to their exceeding joy and comfort received many ample expressions of your Princely care and tender affection towards them, with a gracious promise and assurance, that your Majesty will govern according to the Laws and Statutes of this Realm, and so maintain all your Subjects in the just freedom of their Persons, and safety of their Estates, that all their Rights and Liberties may be by them enjoyed, with as much freedom and security in your time, as in any age heretofore by their Ancestors, under the best of your Royal Progenitors.

For this so great, and gracious a favour, enlarged by a continual in-



timation of your Majesties confidence in the proceeding of this House, they do by me their Speaker make a full return of most humble thanks to your Majesty, withall dutifull acknowledgement of your grace and goodness herein extended to them.

And whereas in one of these Messages delivered from your Majesty, there was an expression of your desire to know whether this House would rest upon your Royal word and promise, assuring them, if they would it should be Royally, and really performed.

As they again present their humble thanks for this seconding, and strengthening of your former Royal expressions, so in all humbleness they assure your Majesty that their greatest confidence is, and ever must be in your gracious favour and goodness, without which (they well know) nothing they can frame, or desire, will be of safety and value to them, and therefore are all humble Suitors to your Majesty, that your Royal heart would graciously accept and believe the truth of theirs, which they humbly present (and full of trust and confidence in your Royal word and promise) as ever House of Commons reposed in any of their best *Kings*.

True it is, they cannot but remember the publick trust, for which they are accomptable to present and future times, and their desires are, that your Majesties goodness in fruit and memory, be the blessing and joy of posterity.

They finde also that of late there hath been publick violation of your Laws and the Subjects Liberties by some of your Majesties Ministers, and thence conceive, that no less then a publick remedy will raise the dejected hearts of your loving Subjects to a cheerfull supply of your Majesty, or make them receive content in the proceeding of this House. From these considerations they must humbly beg your Majesties leave to lay hold of that gracious offer of yours, which gave them assurance, that if they thought fit to secure themselves in their Rights and Liberties, by way of Bill or otherwise, so it might be provided for, with due respect to his Honour and publick good, he would graciously be pleased to give way unto it.

Far from their intentions it is to ineroach upon your Sovereignty, or Prerogative, nor have they the least thought of straining, or enlarging the former Laws in any sort, by any new interpretations or additions.

The bounds of their desire extend no further, then to some necessary explanation of what is truly comprehended within the just sence and meaning of those Laws, with some moderate provision for execution and performance, as in times past upon like occasions have been used.

The way how to accomplish these their humble desires, is now in serious consideration with them; wherein they humbly assure your Majesty, they will neither loose time nor seek any thing of you Majesty, but what they hope may be fit for dutifull and Loyal Subjects to ask, and for a gracious and a good *King* to grant.

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The **K I N G S** Answer to the House of Commons delivered by the Lord Keeper,  
5. May 1628.

**M**R. *Speaker*, and the Gentlemen of the House of Commons: his Majesty hath commanded me to tell you, that he expected an answer by your actions, and not delay by discourse.

You acknowledge his trust and confidence in your proceedings, but his Majesty sees not how ye requite him by your confidence of his word and actions, for what need explanations if you doubt not performance of the true meaning? for the explanation will hazard an incroachment upon his Prerogative, and it may well be said, what needs a new Law upon any old, if you repose confidence in the Declaration his Majesty lately made by me to both Houses, and your selves acknowledge that the greatest trust and confidence must be in his Majesties grace and goodness, without which nothing that you can frame will be of safety, or available to you; Yet to shew clearly the sincerity of his Majesties intentions, he is content that a Bill be drawn for confirmation of *Magna Charta*, and the 6. other Statutes insisted on for the Subjects Liberties, if you shall chuse that to be the best way, so that it be without Additions, Paraphrase, or Explanations.

Thus if you please, you may be secured from your needless fears, and this Parliament may have a happy (wished for) end: whereby the contrary, if you seek to tye the *King* by new, and indeed impossible bonds, you must be accomptable to God and your Countrey for the ill success of this meeting.

His Majesty having given his Royal word, that you shall have no cause to complain hereafter; less then which hath been enough to reconcile great Princes, and therefore ought much more to prevail between *King* and Subject.

Lastly, I am commanded to tell you, that his Majesties pleasure is, that without further replies of Messages, or other unnecessary delays, you do what you mean to do speedily, remembering the last Message which his Majesty sent you by Secretary *Coke* for point of time, his Majesty alwayes intending to perform his promise to his people.



The Lord Cocks speech at the conference in  
the Painted Chamber, presenting the Pe-  
tition of Right, 8. May 1628.

I Pray your Lordships to excuse us, for we have been till one of the Clock about the great business, and (blessed be God) we have dispatcht it in some measure, and before this time we were not able to attend your Lordships, but I hope that this will prove to be a great blessing to us. My Lords, I am commanded from the House of Commons to express their singuler care and affection they have of concurrence with your Lordships in these urging affairs and proceedings of this Parliament: both for the good of the Common-wealth, and principally for his Majesties, And this I may say in this particuler, if we have hundreds of tongues, we were not able to express this desire which we have of that concurrence with your Lordships: but I will leave it without any further expression.

My Lords, what necessity there is, both in respect of your selves and your posterities in the good success of this business, we have acquainted your Lordships with the reasons and the arguments, and also that we have had some conference about it, we have received from your Lordships 5. Propositions, and it behoves us to give your Lordships some reasons why you have not heard from us before now, for in the mean time as we were consulting of this weighty business, we have received divers messages from our great Sovereign the *King*, and they consisted upon 5. parts. First was, that his Majesty would maintain all his Subjects in their just freedom, both of their Persons and Estates. Secondly, That he will govern according to his Laws and Statutes. Thirdly, That we shall finde much confidence in his Royal word, (I pray observe that.) Fourthly, That we shall enjoy all our Rights and Liberties, with as much Freedom and Liberty as ever any Subjects have before times. Fifthly, That whether we shall think it fit, either by way of Bill or otherwise, to go on in this great business, his Majesty would be pleased to give way to it.

These gracious messages do so work upon our affections that we have taken them into consideration. My Lords, when we had these messages, I deal plainly, for so I am commanded by the House of Commons: We did consider in that way we may go for our most secure way, (nay yours,) we do think that the safest way was to go a Parliament course, for we have a Maxim in the House of Commons, and written on the walls of our House, *that old wayes are the safest and surest wayes*. And at last we fell upon that which we did think (if that your Lordships shall consent with us) as the most ancient way of all, and that is my Lords *viam faustam* both to his Majesty and your Lordships, and to our selves, for my Lords, this is the greatest bond  
that

that any Subject can have in Parliament *verbum Regis*, that is an high point of Honour, but this shall be done by the Lords and Commons and assented to by the *King* in Parliament. This is the greatest obligation of all, and this is for the *Kings* Honour and our safety. And therefore my Lords we have drawn a form of a Petition, desiring your Lordships to concur with us herein, for we come with an unanimous consent of all the House of Commons, for there is great reason your Lordships should do so because that your Lordships be involved in the same condition *commune periculum*, and so I have done with the first part. And now I shall be bolde to read that which we have so agreed on, I shall desire your Lordships that I may read it.

## The Petition of Right, to the KINGS most Excellent Majesty,

**H**umbly sheweth unto our Sovereign Lord the *King*, the Lords spiritual & temporal, and Commons in this present Parliament assembled. That whereas it is declared and enacted by a Statute made in the time of the Raigh of *King Edw. 1.* commonly called *Statutum de tallagio non concedendo*. That no Tollage, or aid should be laid, or levied by the *King*, or his Heirs in this Realm, without the good will and assent of the Arch-Bishop, Earles, Barons, Knights, Burgessees and others, the freemen of the Cominalty of this Realm.

And by Authority of Parliament holden in the 13. year of the Raigh of *King Ed. 3.* it is declared and enacted that from thence-forth no Persons should be compelled to make any loan to the *King* against his will, because such loans were against reason, and the Franchises of the Land, And by other Laws of this Realm, it is provided that none should be charged by any charge or imposition, called a Benevolence nor by such like charge, by which the Statutes before mentioned, and other the good Laws and Statutes of this Realm, your Subjects have inherited this freedom that they should not be compelled to Contribute to any Tax, Tollage, Aid, or other like charge, not set by common consent in Parliament: Yet nevertheless of late divers Commissions directed to sundry Commissioners in several Countreys with instructions have issued, by means whereof your people have been in divers parts assembled, and required to lend certain summes of money to your Majesty. And many of them upon refusal so to do, have had an unlawfull Oath administred unto them not warrantable by the Laws and Statutes of this Realm, and have been constrained to become bound to make appearance, and give attendance before your privy Councel and in other places. And others of them have been therefore imprisoned, confined, and sundry other wayes molested and disquieted, and divers other charges have been laid and levied upon your people in several Countreys (alleading some superior by Lord Lieutenants,



tenants, Deputy Lieutenants, Commissioners for Musters, Justices of Peace, and others by command, or direction against the Laws and free Customes of the Realm from your Majestie, or your privy Councel.

And where also by the Statute called the great *Charter* of the Liberties of *England*. It is declared and enacted, That no Freeman may be taken nor imprisoned, nor be disseised of his Frechold, nor Liberties, nor his free Customes, nor be outlawed, or exiled, or in any manner destroyed, but by the Lawfull judgement of his *Peers*, or by the Law of the Land.

And in the 28. year of the Raigh of King *Edw. 3.* it was declared and enacted by Authority of Parliament: that no man of what Estate, or condition he be, shall put out of his Land, or Tenement, nor taken, nor imprisoned, nor disinherited, nor put to death without being brought to answer by due process of Law.

Nevertheless, against the Tenour of the said Statutes, and other the good Laws, and Statutes of your Realm to that end provided, divers of your Subjects have of late been imprisoned without any cause shewed, and when for their deliverance they were brought before your Justices, by your Majesties Writ of *Habeas Corpus*, there to undergo and receive as the Court should order, and the Keepers commanded to certefie the causes of their detainer, no cause was certified, but that they were detained by your Majesties special command, signified by the Lords of your privy Councel, and yet were returned back to several Prisons, without being charged with any thing, the which they might make answer to, and to Law.

And whereas of late great Companies of Souldiers and Marriners have been disperfed into divers Countreys of the Realm, and the Inhabitants against their wills have been compelled to receive them into their houses, and there to suffer them to sojourn against the Laws and Customes of this Realm, and to the great grievance and vexation of the people. And whereas also by Authority of Parliament in the 25. *E. 3.* it is declared and enacted, that no man shall be forejudged of Life, or Limb against the form of the great *Charter*, and the Law of the Land, and by the said great *Charter* and other, the Laws and Statutes of this your Realm no man ought to be adjudged to death, but by the Laws established in this your Realm. Nevertheless of late times divers Commissions under your Majesties great Seal have issued forth, by which certain Persons have been assigned and appointed Commissioners with power and Authority to proceed within the Land, according to the Justice of Martial Law against such Souldiers, or Marriners, or other dissolute Persons joyning with them as should commit any Murther, Robbery, Fellony, Mutiny, or other outrage, or misdemeanour whatsoever, and by such summary course and order as is agreeable to Martial Law, and is used in Armies in time of War to proceed to the trial and condemnation of such offenders,

ders, and them to cause to be executed and put to death according to the Law Martial. By pretext whereof some of your Majesties Subjects have been by some of the said Commissioners put to death, when and where, if by the Laws and Statutes of the Land they had deserved death, by the same Laws and Statutes also they might, and by none other ought to have been adjudged and executed. And also sundry grievous offenders by colour thereof claiming an exemption, have escaped the punishment due to them by the Laws and Statutes of this your Realm: By reason whereof divers of your Officers and Ministers of Justice have unjustly refused, or forbore to proceed against such offenders according to the same Laws and Statutes, upon pretence that the said offenders were punishable onely by Martial Law, and by Authority of such Commissions as aforesaid, which Commissions and all other of like nature are directly contrary to the said Laws and Statutes of this your Realm.

They do therefore humbly pray your most Excellent Majesty, that no man hereafter be compelled to make, or yield any Guift, Loan, Benevolence, Tax, or such like charge, without common consent by Act of Parliament. And that none be called to make answer, or to take such an Oath, or to give attendance, or to be confined, or otherwise molested, or disquieted concerning the same, or for refusal thereof. And that no Freeman may man in such manner as is before mentioned be imprisoned, or detained. And that your Majesty would be pleased to remove the said Souldiers and Marriners, and that your people may not be so burthened in time to come: And that the aforesaid Commissions for proceeding by Martial Law may be revoked & annulled, and that hereafter no Commissions of like nature may issue forth to any Person, or Persons whatsoever, to be executed as aforesaid, least by colour of them any your Majesties Subjects be destroyed and put to death, contrarie to the Laws and Franchises of the Land.

All which they most humbly pray of your most Excellent Majestie as their Rights, and Liberties according to the Laws and Statutes of this Realm. And that your Majestie would also vouchsafe to declare, that the Awards, doings and proceedings to the prejudice of your people in any the premises, shall not be drawn hereafter into consequence, or example. And that your Majestie would be pleased graciously for the further comfort and safety of your people to declare your Royal will and pleasure, that in the things aforesaid, all your Officers and Ministers shall serve you according to the Laws and Statutes of this Realm, as they tender the Honour of your Majestie, and the prosperity of this Kingdom.

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Sr. BEN.



## Sr. BENJAMIN RUDDIERD'S Speech.

Mr. Pym

I Did not think to have spoken again to this Bill, because I was willing to believe that the forwardness of this Committee would have prevented me, but now I hold my self bound to speak, and to speak in earnest. In the first year of the *King*, and the second convention I first moved for the increase and enlarging of poor Ministers livings, I shewed how necessarie it was that it had been neglected, this was also commended to the House by his Majestie, there were as (now) many accusations on foot against scandalous Ministers, I was bolde to tell the House that there were scandalous livings, which were much the cause of the other livings of 5. Marks, of 5. l. a year, that men of worth and of parts would not be musled up to such pittances, that there were some places in *England* which were scarce in Christendom, where God was little better known then amongst the *Indians*. I exempld it in the utmost skirts of the North, where the prayers of the commdn people are more like Spells and Charms then devotions, the same blindness and ignorance is in divers parts of *Wales*, which many of that Countrey doth both know and lament.

I declared also, that to plant good Ministers was the strongest and surest means to establish true Religion, that it would prevail more against Papistry, then the making of new Laws, or executing of old, that it would counterwork Court, Conivence, and Luke-warm accommodation, that though the calling of Ministers be never so glorious within, the outward poverty will bring contempt upon them, especially amongst those, who measure men by the ounce, and weigh them by the pound, which indeed is the greatest part of men.

Mr. Pym, I cannot but testifie how being in *Germany* I was exceedingly scandalized to see the poor stipendarie Ministers of the Reformed Churches there dispised and neglected, by reason of their poverty, being otherwayes very grave and learned men. I am afraid this is a part of the burthen of *Germany*, which ought to be a warning to us.

I have heard many Objections and difficulties, even to impossibilities against this Bill, to him that is unwilling to go, there is even a Bear, or Lion in the way. First let us make our selves willing, then will the way be easie and safe enough.

I have observed that we are alwayes very eager and fierce against Papistry, against scandalous Ministers, and against things which are not so much in our power. I should be glad to see that we did delight as well in rewarding as in punishing, and in undertaking matters within our own reach, as this is absolutely within our power: Our own duties are next us, other mens further of. I do not speak this, that I do  
mislike

mislike the destroying, or pulling down of that which is ill, but then, let us be as earnest to plant and build up that which is good in the room of it; for why should we be desolate? The best and the greatest way to dispell darkness and the deeds thereof is to let in light, we say that day breaks, but no man can ever hear the noise of it, God comes in the still voice, let us quickly mend our Candlesticks, and we cannot want lights.

I am afraid this backwardness of ours will give the adversary occasion to say, that we chuse our Religion, because it is the cheaper of the two, that we would willingly serve God with somewhat that cost us naught. Believe it Mr. *Pym*, he that thinks to save any thing by his Religion but his Soul, will be a terrible looser in the end, we sow so sparingly, and that is the reason we reap so sparingly, and have no more fruit. Me thinks whosoever hates Papistry, should by the same rule hate covetousness, for that's Idolatry too, I never liked hot professions and cold actions, such a heat is rather the heat of a distemper and disease then of life and saving health.

For scandalous Ministers, there is no man shall be more foreward to have them sincerely punnished then I will be, when Salt hath lost its favour, fit it is to be cast on the unsavory place the dunghill. But Sr. let us deal with them as God hath dealt with us: God before he made man, he made the World, a handsome place for him to dwell in, so let us provide them convenient livings, and then punish them on Gods name, but till then, scandalous livings cannot but have scandalous Ministers. It shall ever be a rule to me, that where the Church and Common-wealth are both of one Religion, it is comely and decent that the outward splendor of the Church should hold a proportion, and participate with the prosperity of the temporal State, for why should we dwell in houses of Cedar and suffer God to dwell in Tin? It was a Glorious and Religious work of *King James*, and I speak it to his unspeakable Honour, and to the praise of that Nation, who (though that Countrey be not so rich as ours, yet are they Richer in their affections to Religion,) within the space of one year, he caused to be planted Churches through all *Scotland*, the *Highlands* and the *Boarders*, worth 30*.l.* a year a piece, with a house and some gleab belonging to them, which 30*.l.* a year considering the cheapness of the Countrey, and the modest fashion of Ministers living there, is worth double as much as any where within a 100. miles of *London*, the printed Act and Commission whereby it may be executed, I have here in my hand delivered unto me by a Noble Gentleman of that Nation, and a worthy Member of this House Sir *Francis Stuart*.

To conclude, although Christianity and Religion be established generally throughout this Kingdom, yet untill it be planted more particularly I shall scarce think this a Christian Common-wealth, seeing it hath been moved and stirred in Parliament, it will lye hea-



vy upon Parliaments, untill it be effected. Let us do something for God here of our own, and no doubt God will bleſs our proceedings in this place the better for ever hereafter. And for my own part I will never give over ſolliciting this cauſe as long as Parliaments and I ſhall live together.

C H A R L E S   R E X.  
To our truſty and well-beloved the Lords  
Spiritual and Temporal of the Higher  
House of P A R L I A M E N T.

**W**E being deſirous of nothing more then the advancement of the good peace, and proſperity of our people, have given leave to free debates of higheſt points of our Prerogative Royal, which in times of our Predeceſſors, Kings and Queens of this Realm were ever reſtrained as Matters they would not have diſputed, and in other things we have been willing fairly to condeſcend to the deſires of our loving Subjects as might fully ſatisfie all moderate mindes, and free them from all juſt fears and jealousies, with thoſe Meſſages which heretofore we have ſent to the Commons Houſe, will well demonſtrate to the World, and yet we finde it ſtill inſiſted on, that in no caſe whatſoever, ſhould it never ſo nearly concern Matters of State and government, we nor our privy Council have power to commit any man without the cauſe ſhewed, whereas it often happens that ſhould the cauſe be ſhewed the ſervice thereby would be deſtroyed and defeated, and the cauſe alleadged muſt be ſuch as may be determined by our Judges of our Courts at *Westminster* in a Legal and Ordinary way of Juſtice, whereas the cauſe may be ſuch whereof the Judges have no capacity of Judicature, or rules of Law to direct, or guide their Judgements in caſes of that transcendent nature, which hapning ſo often, the very intermitting of the conſtant rules of government (for many ages within this Kingdom practiſed) would ſoon diſſolve the very frame and foundation of our Monarchy, wherefore as to our Commons we have made propoſitions which might equally preſerve the juſt Liberty of the Subject. So my Lords, we have thought good to let you know that without overthrow of our Sovereignty we cannot ſuffer this power to be impeached. But notwithstanding to clear our conſcience, and juſt intentions this we publiſh, that it is not in our hearts, nor ever will we extend our royal power lent unto us from God beyond the juſt rule of moderation in any thing which ſhall be contrary to our Laws and Cuſtomes, where the ſafety of our people ſhall be our onely aim. And we do hereby declare our royal pleaſure, and reſolution to be (which God willing we ſhall ever conſtantly continue and maintain) that neither we nor our privy Council, ſhall  
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or will at any time hereafter commit, or command to Prison, or otherwise restrain the Person of any for not lending money unto us, or for any other cause, which in our conscience doth not concern the State, the publick good and safety of us and of our people, we will not be drawn to pretend any cause which in our Judgements is not, or is not expressed; which base thought we hope no man will imagine can fall into our royal breast, that in all cases of this nature which shall hereafter happen, we shall upon the humble Petition of the party, or access of our Judges to us readily and really express the cause of their commitment, or restraint, so soon as with conveniency and safety the same is fit to be disclosed and expressed. That in all causes Criminal of ordinary Jurisdiction our Judges shall proceed to the deliverance and baylment of the Prisoner, according to the known and ordinary rules of the Laws of this Land, and according to the Statutes of *Magna Charta*, and those other six Statutes insisted upon, which we do take knowledge stand in force, and which we intend not to abrogate against the true intention thereof.

Thus we have thought fit to signifie unto you, the rather for shortning any long delayes of this question, the season of the year so far advanced, and our great occasions of State not lending us many dayes for long continuance of this Session of Parliament.

*Given under our Signet at our Pallace of Westminster, the 12. of May, in the fourth year of our Raign.*

## The KINGS Message by the Lord Keeper, 21. May 1628.

**H**IS Majestie commanded me to signifie to your Lordships, that the business concerning your part presented by the Commons to the Lords concerning the Liberty of the Subject, wholly depends upon your Lordships, and because his affairs are pressing, and that he is very suddenly to take a Journey to *Portsmouth*. As also because his Majesty would have the business put in a good forwardness before his going thither, his Majestie desires your Lordships this day to proceed to a resolution, whether you will joyn with the House of Commons in the Petition or not.



Mr. M A S O N S speech, concerning the Addition propounded by the Lords, to be added to the Petition of Right.

I N our Petition of Right to the *Kings* Majestie we mentioned the Laws and Statutes, by which it appeared, that no Tax, Loan, or the like ought to be levied by the *King*, but by common assent in Parliament. That no Freeman ought to be imprisoned but by the Law of the Land. That no Freeman ought to be compelled to suffer Souldiers in his house. In the Petition we have expressed the breach of these Laws, and desire that we may not suffer the like, all which we pray as our Rights and Liberties. The Lords have proposed an addition to this Petition in these words (We humbly present this Petition to your Majestie, not onely with a care of our own Liberties, but with a due regard to leave intyre that Sovereign power wherewith your Majesty is intrusted for the protection, safety, and happiness of your people) and whether we shall consent unto this addition is the Subject of this dayes discourse. And because my Lord *Keeper* at the last conference declared their Lordships had taken the words of the Petition apart. The word (leave) in a Petition is of the same nature, as (saving) in a grant, or Act of Parliament, when a Man grants but part of a thing, he saves the rest, when he Petitions to be restored but to part, he leaveth the rest, then in the end of our Petition the word (leave) will imply that something is to be left of that, or at least with a Reverence to what we desire.

The word (entyre) is very considerable, a Conquerour is bound by no Law but hath power *dare leges*, his will is a Law, and although *William* the Conquerour at first to make his way to the Crown of *England* the more easie, and the possession of it the more sure, claiming it by little, but afterwards when there were no powerfull pretenders to the Crown. The little of Conquest to introduce that absolute power of a Conquerour was claimed, and that Statute of *Magna Charta*, and other Statutes mentioned in our Petition do principally limmit that power I hope it is as Lawfull for me to cite a Jesuite as it is for Dr. *Manwaring* to falsifie him, *Suares*, in his first book *de legibus*, cap. 17. delivered his opinion in these words *amplitudo & restrictio potestatis Regum circa ea qua per se mala vel injusta non sunt, pendet ex arbitrio hominum & ex ambigua convencione vel pacto inter Reges & Regnum*. And the further expresseth his opinion that the *King* of *Spain* was so absolute a Monarch, that he might Lawfully impose tribute without consent of his people, untill about 200. years since, when it was concluded between him and his people, that without consent of his people by proxies he should not impose any Tribute. And *Suares* opi-

opinion is, that by that agreement the *Kings of Spain* are bound to impose no Tribute without consent.

And this agreement that Author calls a restraining of that Sovereign power, the Statutes then mentioned in our Petition restraining that absolute power of a Conquerour, if we recite those Statutes, and say we have the Sovereign power intire, we do not take away that restraint which is the virtue and strength of those Statutes, and set at Liberty the claim of the Sovereign power of a Conquerour, which is to be limited and restrained by no Laws, this may be the danger of the word (*entyre.*)

The next words delivered by the Lords as observable is the particle (*that*) because it was said that all Sovereign power is not mentioned to be left, but onely (*that*) with which the *King* is trusted for our protection, safety, and happiness: But I conceive this to be an exception of all Sovereign power, for all Sovereign power in a *King* is for the protection, safety, and happiness of his people: If all Sovereign power be excepted, you may easily Judge the consequence, all Loans and Taxes being imposed by colour of that Sovereign power.

The next word is (*trusted*) which is very ambiguous, whether it be meant trusted by God onely as a Conquerour, or by the people also as *King*, which are to Govern also according to Laws *ex pacto*. In this point I will not presume to adventure further, onely I like it not by reason of the doubtfull exposition it admits. I have likewise considered the proposition it self, and therein I have fallen upon the *dilemma* that this addition shall be construed, either to refer unto the Petition or not: If it doth refer unto the Petition, it is meerly useless and unnecessary, and unbecoming the Judgement of this grave and great Assembly to add to a Petition of this weight; If it hath reference unto it, then it destroys not onely the virtue and strength of our *Petition* *Right*, but our rights themselves, for the addition being referred to each part of the Petition, will necessarily receive this construction.

That none ought to be compelled to make any gift, loan, or such like charge without common consent, or Act of Parliament, unless it be by the Sovereign power with which the *King* is trusted for the protection, safety, and happiness of his people.

That none ought to be compelled to sojourn, or billet Souldiers, unless by the same Sovereign power, and so of the rest of the Rights contained in the Petition. And then the most favourable construction will be that the *King* hath an ordinary Prerogative, and by that he cannot impose Taxes or Imprison. That is, he cannot impose Taxes at his will to imploy them as he pleaseth, & that he hath an extraordinary and transcendent Sovereign power for the protection and happiness of his people, and for such purpose, he may impose Taxes, or billet Souldiers as he pleaseth, and we may assure our selves that hereafter all Loans, Taxes, and billeting of Souldiers will be said to be for the protection, safety, and happiness of the people. Certainly hereafter it  
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will be conceived that an House of Parliament would not have made an unnecessary addition to this *Petition of Right*, and therefore it will be resolved that the addition hath relation to the Petition, which will have such operation as I have formerly declared, and I the rather fear it, because the late Loan and Billeting have been declared to have been by Sovereign power for the good of our selves, and if it be doubtfull whether this proposition hath reverence to the Petition or not, I know not who shall Judge whether Loans, or Imprisonments hereafter be by that Sovereign power or not.

A Parliament which is made a body of several wits, and may be dissolved by one Commission cannot be certain to decide this question. We cannot resolve that, that the Judges shall determine the words of the *Kings* Letter read in this House, expressing the cause of Commitment, may be such, that the Judges have not capacity of Judicature, no rules of Law to direct & guide their Judgements in cases of that transcendent nature, the Judges then and the Judgements are easily conjectured. It hath been confessed by the *Kings* Council, that the Statute of *Magna Charta* bindes the *King*, and his Sovereign power cannot be divided from himself. If then the Statute of *Magna Charta* bindes the *King*, it bindes his Sovereign power; if to the Petition these words be added, the exposition then must be, that the Statute of *Magna Charta* binds the *Kings* Sovereign power. Saving the *Kings* Sovereign power, I shall endeavour to give some answer to the reasons given by the Lords.

The first is, that it is the intention of both Houses to maintain the just Liberty of the Subject, and not to diminish the just power of the *King*, and therefore the expression of that intention in this Petition cannot prejudice us; which I answer,

First that our intention was, and is as we then professed, and no man can assign any particuler in which we have done to the contrary. Neither have we any way transgressed in that kinde in this Petition, and if we make this addition to the Petition, it would give some intimation, that we have given cause or colour of offence therein which we deny, and which if any man conceive so, that he would assign the particuler, that we may give an answer thereunto.

By our Petition we onely desire our particuler Rights and Liberties to be confirmed to us, and therefore it is not proper for us in it to mention Sovereign power in general, being altogether impertinent to the matter in the Petition.

There is a great difference between the words of the addition, and the words proposed therein, for reason, *viz.* between just power which may be conceived to be limitted by Laws, and Sovereign power, which is supposed to be transcendent and boundless.

The second reason delivered by their Lordships was that the *King* is Sovereign. That as he is Sovereign he hath power, and that that Sovereign power is to left, for my part I would leave it, so as not to mention it, but if it should be expressed to be left in this Petition as it  
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is proposed, it must admit something to be left in the *King* of what we pray, or at least admit some Sovereign power in his Majesty in these Priviledges, which we claim to be our Right which would frustrate our Petition and destroy our Right, as I have formerly shewed.

The third reason given from this addition was that in the statute *Articuli super Chartas*, there is a saving of the right and seigniory of the Crown.

To which I give these answers : That *Magna Charta* was confirmed above 30 times, and a general *saving* was in none of these *Acts* of confirmation but in this onely, and I see no cause we should follow one ill, and not 30 good Presidents, and the rather because that *saving* produced ill effects that are well known.

That *saving* was by Acts of Parliament : The conclusion of which Act, is, that in all those Cases the *King* did will, and all those that were at the making of that Ordinance, did intend that the Right and Seigniory of the Crown should be saved : By which it appears that the *saving* was not in the Petition of the Commons, but added by the *King*, for in the Petition the *Kings* will is not expressed.

In that Act the *King* did grant and depart with to his people divers Rights belonging to his prerogative, as in the first Chapter he granted that the people might choose three Men which might have power to hear and determine complaints made against those that offended in any point of *Magna Charta*, though they were the *Kings* officers, and to fine and ransom them, and in the 8. 12. and 19. Chapter of that Statute the *King* departed with other prerogatives, and therefore there might be some reason of the adding of that Sovereign by the *Kings* Council : But in this Petition we desire nothing of the *Kings* Prerogative, but pray the enjoying of our proper and undoubted Rights and Priviledges, and therefore there is no cause to add any words which may imply a *saving* of that which concerns not the matter in the Petition.

The 4. reason given by their Lordships was, that by the mouth of our *Speaker*, we have this Parliament declared that it was far from our intention to incroach upon his Majesties Prerogative, and that therefore it could not prejudice us to mention the same resolution in an addition to this Petition.

To which I answer that that declaration was a general answer to a Message from his Majesty to us, by which his Majesty expressed that he would not have his Prerogative streitned by any new explanation of *Magna Charta*, or the rest of the Statutes, and therefore that expression of our *Speakers* was then proper to make it have reference to this Petition; there being nothing therein contained, but particuler Rights of the Subject, and nothing at all concerning his Majesties Prerogative.

Secondly that answer was to give his Majesty satisfaction of all our proceedings in general, and no man can assign any particuler in



which we have broken it, and this Petition justifies it self, that in it we have not offended against the protestation, and I know no reason but that this declaration should be added to all our Laws we shall agree on this Parliament, as well as to this Petition.

The last reason given, was, that we have varied in our Petition from the words of *Magna Charta*, and therefore it was well necessary that a *saving* should be added to the Petition.

I answer that in the Statute 5. E. 3. 25. E. 3. 28. E. 3. and other Statutes, with which *Magna Charta* is confirmed, the words of the Statute of explanation differ from the words of *Magna Charta* it self, the words of some of the Statutes of explanation being, that no man ought to be apprehended, unless by indictment, or due process of Law, & the other statutes differing from the words of *Magna Charta* in many other particulars, and yet there is no (*saving*) in those Statutes, much less should there be any in a Petition of Right, these are the answers I have conceived to the reasons of their Lordships, and the exposition I apprehend must be made of the proposed words, being added to our Petition. And therefore I conclude that in my opinion we may not consent to this addition, which I submit to better Judgements.

## The Reasons of the Commons House, delivered by Mr. GLAUVILE, why they cannot admit of the Propositions tendered unto them by the Lords.

*May it please your Lordships,*

**I** Am commanded by the House of Commons to deliver unto your Lordships their reasons, why they cannot admit of the Proposition tendered unto them by you: but for an introduction into the business, please you to remember that a Petition of Right was shewed to your Lordships, wherein we desired you would joyn with us, a Petition my Lords fitting for these times, grounded upon Law, and seeking no more then the Subjects just Liberty.

The Petition consisted of 4. parts. The first touching Loan, Aids, and Taxes. The second touching imprisonment of mens Persons. The third touching Billeting of Souldiers. The fourth touching Commissions issued for Martial Law, and put in execution upon several Persons. Groaning under the burthen of these, we desired remedy, and wish your Lordships would joyn with us, which you having taken into consideration, we must confess, have dealt nobly and freely with us, not to conclude any thing till you hear our just reasons, for which we thank your Lordships, and hope your Lordships will value those reasons which we shall now offer unto your Lordships.

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The work of this day will make a happy issue, if your Lordships please to relinquish this, as we formerly upon a conference with your Lordships have done some other things. For the Proposition my Lords we have debated it thoroughly in our House, and I am commanded to deliver unto you the reasons why we cannot insert this clause, Neither your Lordships, nor we desire to debate Liberty beyond the due bounds, or to inroach upon the *Kings* Prerogative and lessen the bounds thereof. The first reason I am to lay down, is, touching Sovereign power, which I beseech you not to accept as my own, being but a weak Member of that strong body; but as the reasons of the whole House upon great and grave considerations.

First my Lords, the words Sovereign power hath either reference, or no reference to the Petition, if no reference then superfluous, if a reference then dangerous and operative upon the Petition, and we think your Lordships purposes is not to offer unto us any thing that may be vain, or to the hinderance of any thing wherein you have already joyned with us. The Petition declareth the Right of the Subject, which yet may be broken by the word Sovereign power, and so the virtue of the Petition taken away. The end of the Petition is not to enlarge the bounds of Law, but their Liberties being infringed, to reduce them to their ancient bounds, and shall we by admitting of these words Sovereign power, instead of curing the wound, launch it and cut it deeper? The next point is, the word (*trust*) a word of large latitude, and deep fence, we know that there is a trust in the Crown and King, but regulated by Law, we acknowledge in penal Statutes the King may grant another power to dispense with the Law, but *Magna Charta* inflicting no penalty leaveth no trust, but claimeth his own right, therefore the word (*trust*) would confound this distinction.

Our next reason is, we think it absolutely repugnant to any course of Parliament to put (*saving*) to the Petition. In former times the course of petitioning the King was this: The Lords and the *Speaker* either by words, or writing preferred their Petition to the King; this then was called the Bill of the Commons, which being received by the King, part he received and part he put out, part he ratified, for as it came from him it was drawn into a Law, But this course in 2. H. 5. was found prejudicial to the Subject, and since in no such cases they have petitioned by Petition of Right, as we now do, who come to declare what we demaund of the King: For if we should tell him what we should not demaund, we should then proceed not in a Parliamentary course. Now for that which is alleadged by your Lordships *de articulis sup. Chartas*, that my Lords is not like this, that is (*saving*) upon particulars; But this Petition consisting on particulers, would be destroyed by a general saving, The saving *de articulis sup. Chartas* are of three aids, for Ransomming the Kings Person, for Knighting the Kings eldest Son, and once for Marrying the Kings eldest Daughter: These by the form of the Petition, shew that



they came not in upon the *Kings* answer, but upon the Petition. First then followed the (*savings*) which under favour, we think are no reasons to make us accept of this (*savings*) being not pertinent to the Petition.

These 23. Statutes 34. *E.1.* were made to confirm *Magna Charta*, so that there are in all 30. Acts to set *Magna Charta* in its purity, and if some subsequent Statute have laid some blemish upon it, shall we now then make the subject in worse case, by laying more weight upon it (God forbid.) In the next place your Lordships reason thus, that this which you wish we would admit of, is no more then what we formerly did profess, when we sent the *King* word, we had no purpose at all to trench upon his prerogatives. It is true my Lords we did so, but this was not annexed to any Petition, for in that manner we should never have done it. And here I am commanded (with your favours) to deliver unto you what a Learned Member of the House delivered unto our House touching this point. The *King* (saith he) and the Subject hath two liberties. Two Mannors, joyning one upon another; the *King* is informed the Subject hath intruded upon him; but upon triall it appeareth not to be so, were it fitting, think you that the Subject should give security that he should not inroach or intrude on that Mannor of his because the *King* had been informed he did so? I think you will be of another minde, wherefore I am commanded seeing we cannot admit of this addition, to desire your Lordships to joyn with us in the Petition, which being granted and the hearts of the *King* and people knit together, I doubt not but his Majestie will be safe at home, and feared abroad.

### Sir HENRY MARTINS Speech.

**M**Y Lords; the work of this day wherein the House of Commons hath implied the Gentleman that spake last, and my self was to reply to the answer, which it hath pleased the Lord Keeper to make to those reasons, which we had offered to your Lordships consideration, in justification of our refusall, not to admit into our Petition the addition commended by your Lordships, which reasons of ours since they have not given such satisfaction as we desired, and well hoped, as by the Lord Keepers answer appeared. It was thought fit for our better order and method in replying, to divide the Lord Keepers answer into two parts, a Leagall, and a Rationall: The reply to the leagall your Lordships have heard, my self comes intrusted to reply to the rational, which also consisted of two branches, the first deduced from the whole context of the additional clause, the second inforced out of some part.

In the first were these reasons, that the same deserved our acceptance. First as satisfactory to the *King*, Secondly to your Lordships,  
Thirdly

Thirdly, agreeable to what our selves had often protested, and professed expressly by the mouth of our Speaker.

I must confess these motives were weighty and of great force, and therefore to avoid misunderstanding, and misconceit, which otherwise might be taken against the House of Commons upon refusall of the propounded addition, It is necessary to State the question rightly, and to set down the true difference between your Lordships and us: Now indeed there is no difference or question between your Lordships and us, concerning this additional clause in the nature and quality of a proposition: For so considered we say it is most true, and to be received and imbraced by us; *In toto & qualibet parte & qualibet syllaba*, yea and were that the question we should add to this addition, and instead of (*due regard*) say, we have had, have and ever will have a special and singular regard: where to leave entire Sovereign power, were to intimate as if we had first cropt it and then left it, but our regard was to acknowledge and confess it sincerely and to maintain it constantly, even to the hazard of our goods and lives if need be.

To which purpose your Lordships may be pleased to remember that strict oath every Member of our House hath taken this very session in these words I (A. B.) *do utterly testifie and declare in my Conscience that the Kings highness is the Supreme or Sovereign Governour of this Realm in all Causes &c. and to my utmost power will assist and defend all Jurisdictions, Priviledges Preheminencies and Authorities gramed or belonging to the Kings Highness or united or annexed to the Imperial Crown of this Realm, &c.*

So that your Lordships need not to borrow from our protestations any exhortations to us, to entertain a writing in assistance of the Kings Sovereign power, since we stand obliged by the most Sacred bond of a solemn Oath, to assist and defend the same if cause or occasion so required; So that the onely question between your Lordships and us is, whether this clause should be added to our Petition and received into it as part thereof? which to do your Lordships reasons have not perswaded us, because so to admit it, were to overthrow the fabrick and substance of our *Petition of Right* and to annihilate the Right pretended by us, and the Petition it self in effect. For these words being added to our Petition (*viz*) we humbly present this Petition &c. with due regard to leave intire your Sovereign power &c. do include manifestly an exception to our Petition, and an exception being of the nature of the thing whereunto it is an exception, *Exceptio est de regula*, must of necessity destroy the rule or Petition so far as to the Case excepted; *Exceptio firmat regulam in Casibus non exceptis, in Casibus exceptis destruit Regulam*. Then this construction followeth upon our Petition thus enlarged, that after we have Petitioned, That no Freeman should be compelled by imprisonment to lend or contribute money to his Majestie without



his assent in Parliament, nor receive against his will Souldiers into his house, or undergo a commission of Martiall Law for life or *Member* in time of peace: We should add, except his Majestie be pleased to require our monies and imprison us for not lending, and send Souldiers into our houses, and execute us by Martiall Law in time of peace by virtue of his Sovereign power.

Which construction as it followeth necessarily upon this enlargement, so it concludeth against our Right in the premisses, and utterly frustrateth all our Petition, neither may it seem strange if this clause additionall (which of it self in quallity of a proposition we confesse) being added to our Petition (which also is true) should overthrow the very frame and fabrick of it, seeing the *Logicians* take knowledge of such a Fallacy called by them, *Fallacia à bene divisis ad male conjuncta*. Horace the Poet giveth an instance to this purpose in a painter, who, when he had painted the head of a Man according to Art, would then joyn to it the neck of a horse, and so marr the one and the other, whereas each by it self might have been a peice of right good workmanship.

The second branch of my *Lordkeepers* rationall parte was enforced out of the last words of this addition, by which his Lordship said, that they did not leave intire all Sovereign power, but that wherewith his Majestie is trusted, for the protection, safety, and happiness of the people, as if his Lordship would infer that Sovereign power wherewith, &c. in this place, to be *terminum diminuentem* a term of diminution or quallification, and in that consideration might induce us to accept it, but under his Lordships correction we cannot so interpret it. For first we are assured that there is no Sovereign power wherewith his Majestie is trusted either by God or Man, but onely that which is for the protection, safety and happiness of his people, and therefore that limitation can make no impression upon us, but we conceive it rather in this place to have the force *termini adaugentis*, to be a term of important advantage against our Petition, a term of restriction, and that wheresoever his Majesties Sovereign power should be exercised upon us in all or any the particulars mentioned in the Petition, we should without further inquiry submit thereunto as assuming and taking it *pro concesso* it induced to our safety and happiness, &c. Since therefore (as the Petition is now conceived) it carrieth the form and face of a picture, which representeth to the life the pressures and grievances of the peoples, with the easie remedies. And therefore we hope that his Majesties casting upon it a gracious eye, will compassionate his poor loyall Subjects, and afford a comfortable answer.

I do humbly pray your Lordships not to marr or blemish the grace and face of this picture with this unnecessary addition, and unnecessary I prove it to be, according to that Rule *expressio ejus quod tacite inest nihil operatur*. And Sovereign power in Cases where it  
hath

hath place, and ought to be used, is alwayes necessarily understood, and though not expressed, yet supplied by reasonable intendment, or by the opinion of all Learned men.

And therefore as it neither is, nor can be by us expressly included, especially in this Petition, where the addition thereof would make such a confusion of the whole sence and substance.

The *Kings* Sovereign power and Prerogative is alwayes able to save it self, and if it were not, we must without this addition save it to our utmost powers, if we will save our Oath, and save our selves. The true state of the cause thus standing between your Lordships and us, the House of Commons doth not a little marvel upon what grounds your Lordships are so earnest, to urge upon them this addition to be inserted into their Petition, they nothing doubt, but that the same proceeded out of a sollicitude and fear which your Lordships have, least otherwise the simple and absolute passage of this Petition might be construed hereafter in prejudice of his Majesties Sovereign power. And this your Lordships sollicitude and fear proceedeth from your love, as the Poet saith, *Res est solliciti plena Timoris Amor*: But I humbly pray your Lordships to examine with us the grounds of this your sollicitude and fear, which grounds needs must be laid either upon the words of the Petition, or the intention of the Petitioners.

Upon the words there is no possibility to lay them, for therein is no mention of the Sovereign power. And were the words doubtfull as thus, we pray the like things be not done hereafter, under pretext of your Majesties Sovereign power, yet in respect of the Protestations preceeding concomitant and subsequent to the Petition, such doubtfull words ought reasonably to be interpreted onely of such Sovereign power as was not applyable to the cases wherein it was exercised, and of such Sovereign power as should be justly practised. But there are no such doubtfull words, and therefore it followeth that your Lordships fear and sollicitude must be grounded upon the intention of the Petitioners. Now your Lordships well know that the House of Commons is not ignorant, that in a Session of Parliament, though it continue as many weeks, as this hath done dayes, yet there is nothing *prius & posterius*, but all things are held and taken as done at one time, If so, what a strange collection was this, that at the same time, the House of Commons should oblige themselves by a fearfull adjuration, to assist and defend all Priviledges and Prerogatives belonging to the *King*, and at the same time by a Petition (cautiously conveyed) endeavour, or intend to divest and deprive the *King* of some Prerogatives belonging to his Crown. If therefore such fear and sollicitude can neither be grounded upon the words of the Petition nor intention of the Petitioners, I humbly pray your Lordships to lay them aside, as we do believe that the proposition of this addition from your Lordships was not onely excuseable, but commendable as proceeding from your love, so now having heard our reasons your Lordships would  
rest



rest satisfied, that our refusal to admit them into our Petition proceedeth from the conscience of the integrity and uprightness of our own hearts, That we in all this Petition have no such end to abate, or diminish the *Kings* just Prerogative: And so much in reply to that rational part whereby my Lord *Keeper* laboured to perswade the entertainment of this addition.

This being done, it pleased the House of Commons to instruct and furnish me with certain reasons, which I should use to your Lordships to procure your absolute conjunction with us in presenting this Petition, which albeit I cannot set forth according to their worth, and the instructions given me by the House, yet I hope their own weight will so press down into your Lordships consciences and judgements, that without further scruple you will cheerfully vouchsafe to accompany this Petition with your right noble presence.

*A Personis.* The first argument wherewith I was commanded to move your Lordships, was drawn from the consideration of the Persons which are Petitioners: The House of Common, a House whose temper, mildness, and moderation in this Parliament hath been such, as we should be unthankfull, and injurious to Almighty God, if we should not acknowledge his good hand upon us, upon our tongues, upon our hearts, procured (no doubt) by our late solemn and publick humiliation and prayers.

This moderation will the better appear, if in the first place we may be remembred, in what passion and distemper many Members of this House arrived thither, what bosomes, what pockets full of complaints, and lamentable grievances the most part brought thither, and those every day renewed by Letters and Packets from all parts and quarters. You know the old proverb *ubi dolor ibi digitus, ubi amor ibi oculus*. It is hard to keep our fingers from often handling the parts ill affected; but yet our moderation overcame our passion, our discretion overcame our affection; This moderation also will the better appear, if in the second place it be not forgotten, how our Ancestors and Predecessors carried themselves in Parliaments, when upon lighter provocations less could not serve their turns, but new severe Commissions to hear, and determine offences against their Liberties, publick Ecclesiastical curses, or excommunications against the Authors or Actors of such violations, accusations, condemnations, executions, banishments. But what have we said all this Parliament? we onely look forward, not backward, we desire amendment hereafter, no mans punishment for ought done heretofore: Nothing written by us in bloud; nay, not one word spoken against any mans Person in displeasure. The conclusion of our Petition is, That we may be better intreated in time to come: And doth not this moderate Petition deserve your Lordships cheerfull conjunction *ex congruo & condigno*? If a Worm, being troden upon, could speak, a Worm would say, tread upon me no more I pray you, higher we rise, not lower we cannot descend. And thus much  
we

we think in modesty may well be spoken in our own commendation; thence to move your Lordships to vouchsafe us your noble Company in this Petition without surcharging it with this addition.

*A tempore.* Our next argument is drawn *a tempore* from the unseasonableness of the time. The wise man saith, there is a time for all things under the Sun *tempus summi*. And if in the wise mans Judgement a word spoken in its due time be precious as Gold and Silver, then an unseasonable time detracts as much from the thing, or word done, or spoken: We hold (under your favours) that the time is not seasonable now for this addition. It is true, that of it self Sovereign power is a thing alwayes so sacred, that to handle it otherwise then tenderly, is a kinde of sacrilege, and to speak of it otherwise then reverently, is a kinde of blasphemy, but every vulgar capacity is not so affected, the most part of men, nay almost all men judge and esteem, all things not according to their own intrinsick virtue and quality, but according to their immediate effects, and operations which the same things have upon them. Hence it is, that Religion it self receiveth more, or less credit and approbation, as the Teachers and Professors are worser, or better, Yea if God himself send a very wet Harvest, or Seed-time, men are apt enough to censure Divine power. The Sovereign power hath not now for the present the ancient amiable aspect in respect of some late sad influences, but by Gods grace it will soon recover.

To intermix with this Petition any mention of Sovereign power (*rebus sic stantibus*) when angry men say Sovereign power hath been abused; and the most moderate wish it had not been so used, we hold it not seasonable under your Lordships correction.

*A loco.* Our next argument is drawn *a loco*, we think the place where your Lordships would have this addition inserted, *viz.* in the Petition, no convenient, or seasonable place; Your Lordships will easily believe that this Petition will run through many hands, every man will be desirous to see, and to read what their Knights, and their Burgessees have done in Parliament upon their complaints, what they have brought home for their 5. Subsidies. If in perusing of this Petition they fall upon the mention of Sovereign power, they presently fall to arguing, & reasoning, and discanting what Sovereign power is, what is the Latitude, whence the Original? and where the bounds? with many such curious and captious questions, by which course Sovereign power is little advanced, or advantaged: For I have ever been of opinion that it is then best with Sovereign power, when it is had in *tacite venerationem*, not when it is prophaned by publick hearings, or examinations.

Our last argument is drawn from our duty and Loyalty to his Majesty, in consideration whereof we are fearfull at this time to take this addition into our Petition lest we should do his Majesty herein some disservice. With your Lordships, we make the great Council of the King and Kingdom: And though your Lordships having the happi-



ness to be near his Majesty, know other things better, yet certainly the state and condition of the severall parts, for which we serve, their dispositions and inclinations, their apprehensions, their fears and jealousies are best known unto us. And here I pray your Lordships to give me leave to use the figure called *Reticentia*, that is, to insinuate, and intimate more then I mean to speak. Our chief and principal end in this Parliament is to make up all rents, or breaches between the *King* and his Subjects, to draw them and knit them together from that distance whereof the world abroad takes too much notice to work a perfect union and reconciliation, how improperly and unapt at this time this addition would be in respect of this end, we cannot but foresee, and therefore shun it, and do resolve that it is neither agreeable to the Persons of such Councillors whom we are, nor answerable to that love and duty which we owe to his Majesty to hazard an end of such unspeakable consequence upon the admittance of this addition into our Petition, whereof (as we have shewed) the omission at this time can by no means harm the *Kings* Prerogative, the expression may produce manifold inconveniences, and therefore since the admittance of your Lordships addition into our Petition is incoherent and incompatible with the body of the same, since there is no necessary use of it, for the saving of the *Kings* prerogative, since the moderation of our Petition deserveth your Lordships cheerfull conjunction with us, since this addition is unseasonable for the time, and inconvenient in respect of the place where your Lordships would have it inserted; and lastly may prove a disservice to his Majesty.

I conclude with a most affectionate prayer to your Lordships to joyn with the House of Commons in presenting this Petition unto his sacred Majesty as it is without this addition.

**The K I N G s speech in the Higher House at  
the meeting of both Houses,  
2. June 1628.**

*Gentlemen,*

**I** Am come hither to perform my duty, and I think no man will think it long, since I have not taken so many dayes in answering of the Petition as you have spent weeks in framing it, and I am come hither to shew you that as well in formall things as in essential, I desire to give you as much content as in me lies.

**The**

## The Lord K E E P E R in explanation of the same.

**M**Y Lords, and you the Knights, Cittizens, and Burgesſes of the House of Commons, his Maieſty hath commanded me to ſay unto you, that he takes it in good part, that in conſideration how to ſettle your own Liberty, you have generally profeſſed in both Houſes, that you have no intention for to leſſen, or diminith his Maieſties Prerogative, wherein as you have cleared your own intentions, ſo his Maieſty now comes to clear his, and to ſtrike a firm league with his people, which is ever decreed to be moſt conſtant and perpetual, when the conditions are equal and known to be ſo: Theſe cannot be in a more happy eſtate, then when your Liberties ſhall be an ornament and ſtrength to his Maieſties Prerogative, and his Prerogative a defence to your Liberties. In this his Maieſty doubts not, but both you and he ſhall take a mutual comfort hereafter, and for his part he is reſolved to give an example in ſo uſing of his power, as hereafter you ſhall have no cauſe to complain. This is the ſumme of that which I am to ſay to you, Here read your own Petition, and his *Majeſties gracious answer.*

## The K I N G S answer to the Petition of Right, 2. June, by the Lord K E E P E R.

**T**He *King* willeth that Right be done, according to the Laws and Cuſtomes of the Realm, and that the Statutes be put in due execution, that the Subject may have no cauſe to complain of any wrong, or oppreſſion contrary to their juſt Rights and Liberties, to the preſervation whereof, he holds himſelf in conſcience as well obliged, as of his Prerogative.

## Sir J O H N E L L I O T S Speech 3. June.

*Mr. Speaker,*

**W**E ſit here as the great Council of the *King*, and in that capacitie, it is our duty to take into conſideration the State, and affairs of the Kingdom, and where there is occaſion to give them in a true representation by way of council and advice, with what we conceive neceſſary or expedient for them.

In this conſideration I confeſs many a ſadd thought hath affrighted me, and that not onely in reſpect of our dangers from abroad, which yet I know are great, as they have been often in this place



prest and dilated to us, but in respect of our disorders here at home we do inforce those dangers and by which they are occasioned; For I believe I shall make clear unto you, that loth at first the cause of these dangers were disorders, and our disorders now are yet our greatest dangers, and not so much the potency of our enemies, as the weakness of our selves do threaten us, and that saying of the Father may be assumed by us, *Non tam potentia sua quam negligentia nostra*. Our want of true devotion to heaven, our insincerity and doubling in Religion, our want of Councils, our precipitate actions, the sufficiency or unfaithfulness of our Generals abroad, the corruptions of our Ministers at home, the impoverishing of the Sovereign, the oppression and depression, the exhausting of our treasures, waste of our provisions, Consumption of our Ships, destruction of Men, This makes the advantage to our enemies, not the reputation of their Arms. And if in these there be not reformation, we need no Foes abroad, time it self will ruine us.

To shew this more fully, as I believe you will all hold it necessary, that there seem not an aspersion on the State, or imputation on the Government, as I have known such mentions misinterpreted, which far it is from me to propose, that have none but clear thoughts of the Excellency of his Majestie, nor can have other ends but the advancement of his glory: I shall desire a little of your patience extraordinarily to open the particulars, which I shall do with what brevity I may, answerable to the importance of the cause and the necessity now upon us, yet with such respect and observation to the time as I hope it shall not be troublesome.

For the first then our insincerity and dubling in Religion, the greatest and most dangerous disorder of all others, which hath never been unpunished, and of which we have so many strong examples of all States, and in all times to awe us, What testimony doth it want? will you have Authority of bookes? look on the collection of the Committee for Religion, there is too clear an evidence; will you have Recors? see then the Commission procured for composition with the Papists in the North: Mark the proceedings thereupon: you will finde them to little less amounting then a tolleration in effect, thought upon some slight payments and the easiness in them will likewise shew the favour thats intended, Will you have proofs of men, witness the hopes, witness the presumptions, witness the reports of all the Papists generally, observe the dispositions of Commanders, the trust of Officers, the confidence of secrecies of imployments in this Kingdom, in *Ireland* and elsewhere, they all will shew it hath too great a certainty, and unto this add but the incontrollable evidence of that all-powerfull hand which we have felt so sorely that gave it full assurance, for as the Heavens oppose themselves to us for our impiety, so it is we that first oppose the Heavens.

For the second, our want of Councils, that great disorder in State,  
with

with which there cannot be stability, if effects may shew their causes as they are, after a perfect demonstration of them, our misfortunes, our disasters serve to prove it, and the consequence they draw with them, If reason be allowed in this dark age, the judgment of dependencies and foresight of contingencies in affairs confirm it. For if we view our selves at home, are we in strength, are we in reputation equall to our Ancestors? if we view our selves abroad, are our Friends as many as our Enemies? Nay more, do our friends retain their safety and possessions? do our Enemies enlarge themselves, and gain for them and us? what Council to the loss of the *Pallatinate*, sacrificed we our honour and our men sent thither, stopping those greater powers appointed for that service, by which it might have been defensible, what Council gave direction to the late action? whose wounds are yet a bleeding, I mean the expedition to *Rhee*, of which there is yet so sadd a memorie in all men, what design for us, or advantage to our State could that import? you know the wisdom of our *Ancestors*, the practice of their times, how they preserved their safeties we all know and have as much cause to doubt as they had the greatness and ambition of that Kingdom, which the Old world could not satisfie against this greatness and ambition, we likewise know the proceedings of that Princess, that never to be forgotten Excellency of *Queen Elizabeth*, whose name without admiration falls not into mention with her Enemies, you know how she advanced her self, how she advanced this Kingdom, how she advanced this Nation in glorie and in state, how she depressed her Enemies, how she upheld her Friends, how she enjoyed a full security, and made them then our scorn, whom now are made our terror. Some of the principals she built on, were these, and if I mistake let reason and our Statesmen contradict me.

First to maintain (in what she might) a unity in *France*, that that Kingdom being at peace within it self might be a Bulwark to keep back the power of *Spain* by land.

Next to preserve an amity and league between the States and us, that so we might come in aid of the low Countries, and by that means receive their Ships and help by sea.

This treable-cord so working between *France* the States and us, might enable us as occasion should require to give assistance unto others, and by this means the experience of that time doth tell us, that we were not onely free from those fears that now possels and trouble us, but then our Names were fearfull to our enemies. See now what correspondency or actions had with this, square it by these rules, that it induce a necessary consequence of the division of *France* between the Protestants and their *King*, of which there is too wofull and lamentable experience. It hath made an absolute breach between that State and us, and so entertained us against *France*, *France* in preparation against us, that we have nothing to promise



our neighbours hardly for our selves. Nay but observe the time, in which it was attempted, and you shall finde it not onely varying from those principals, but directly contrary and opposite *ex diametro* to those ends, and such as from the issue and success rather might be through a conception of *Spain*, then begotten here with us.

Here there was an interruption made by  
**Sr. HUMFRY MAY** expressing a dislike, but the House of Commons  
 commanded him to go on: it  
 thus followeth:

Mr. Speaker,

**I** Am sorry for this interruption, but much more sorry if there hath been occasion, whercin as I shall submit my self wholly to your judgement to receive what censure you should give me, if I have offended. So in the integrity of my intentions and clearness of my thoughts, I must still retain this confidence, that no greatness may deter me from the duties which I owe to the service of my King and Countrey, but with a true *English* heart, that I shall discharge my self as faithfully and as really, to the extent of my poor power, as any mans, whose honours, or whose Offices most strictly have obliged him, you know the dangers *Denmark* is in, how much they concerned us, what in respect of our Alliance and the Countrey, what in the importance of the *Sound*, what an advantage to our Enemies the gain thereof would be? what loss? what prejudice to us by this division? we breaking upon *France*, *France* being intraged by us, the *Netherlands* at amazement between both, neither could we intend to aid that luckless King, whose loss is our disaster: Can those now that express their troubles at the hearing of these things, and have been so often told us in this place of their knowledge in the conjunctures and disjunctures of affairs, say, they advised in this? Was this an Act of Council Mr. Speaker? I have more charity then to think it, and unless they make a confession of themselves I cannot believe it.

For the next, the insufficiency and unfaithfulness of our Generals, that great disorders abroad, what shall I say, I wish there were not cause to mention it, and but out of the apprehension of the dangers that's to come, if the like chance hereafter be not prevented, I could willingly be silent. But my duty to my Sovereign, and the service of this House, the safety and Honour of my Countrey are above all respects: and what so nearly tendeth to the prejudice of this may not be forborn.

At *Calis* then, in that first expedition we made, when we arrived and  
 found

found a Conquest ready, the *Spanish* ships I mean fit for the satisfaction of a Voyage, and of which some of the chiefeſt then there themſelves, have ſince aſſured me the ſatisfaction would have been ſufficient, either in point of Honour, or in point of profit, why was it neglected? why was it not atchieved; it being of all hands granted, how ſenſible it was after, when with the deſtruction of ſome men, and with the expoſition of ſome others, who though their fortune ſince have not been ſuch, by chance came off: When I ſay with the loſs of our ſerviceable men, that unſerviceable men were gained, and the whole Army landed, why was there nothing done, why was there nothing attempted? if nothing were intended, wherefore did they Land? if there were a ſervice, why were they ſhipt again?

Mr. *Speaker*, it ſatisfies me too much in this, when I think of their dry and hungry march unto that drunken quarter, for ſo the Souldiers term'd it, where was the period of their Journey, that divers of our men being left as a ſacrifice to the Enemy; that labour was at an end.

For the next undertaking at *ReeZ* I will not trouble you much, only this in ſhort, was not that whole action carried againſt the Judgment, and opinion of the Officers thoſe that were of Council? was not the firſt, was not the laſt, was not all in the landing, in the intrenching, in the continuance there in the aſſault, in the retreat? did any advice take place of ſuch as were of Council. If there ſhould be made a particuler inquiſition thereof theſe things will be manifeſt, and more I will not inſtance. Now the manifeſtation that was made for the reaſon of theſe Arms, nor by them nor in what manner, nor on what grounds it was publiſhed, nor what effects it hath wrought, drawing as you know almoſt the whole World in league againſt us, nor will I mention of the leaving of the Wines, the leaving of the Salt which were in our poſſeſſion, & of a value as they ſaid to answer much of our expence, nor that wonder which no *Alexander* or *Cæſar* ever did, the enriching of the Enemy by courteſies when the Souldiers wanted help, nor the private intercourſes and Parlies with the Fort which continually were held, what they intended may be read in the ſucceſs, and upon due examination thereof they would not want their proofs.

For the laſt Voyage to *Rochell*, there needs no obſervations, it is ſo freſh in memory, Nor will I make an inference or Corolory, and all your own knowledge ſhall judge what truth, or what ſufficiency they expreſſed. For the next, the ignorance and corruption of our Miniſters, where can you miſs of inſtances? if you ſurvey the Court, if you ſurvey the Countrey, if the Church, if the Cittie be examined, if you obſerve the Bar, if the Bench, if the Courts, if the ſhipping, if the Land, if the Seas: All theſe will render you variety of proofs, and in ſuch meaſure and proportion as ſhews the greatneſs of our ſickneſs, that if it have not ſome ſpeedy remedy, our caſe is moſt deſperate.

Mr. *Speaker*, I fear I have been too long in theſe particulers that are paſt,



past, and am unwilling to offend you, therefore in the rest I shall be shorter, and in that which concerns the impoverishing of the *King*, no other arguments will I use, then such as all men grant.

The Exchequer you know is empty, the Reputation thereof gone, the ancient Lands are sold, the Jewels pawned, the Plate ingaged, the Debt still great, almost all charges both ordinary and extraordinary born by Projects: What poverty can be greater, what necessity so great, what perfect *English* heart is not almost dissolved into sorrow for the truth, for the oppression of the Subject? which as I remember is the next particuler I proposed. It needs no demonstration, the whole Kingdom is a proof, and for the exhausting of our treasures that oppression speaks it, what waste of our provisions, what consumption of our ships, what destruction of our men have been, witness that Journey to *Argiers*.

Witness that with *Mansfield*.

Witness that to *Cales*.

Witness the next.

Witness that to *Rees*.

Witness the last, I pray God we may never have more such witnesses.

Witness likewise the *Pallatinate*.

Witness *Denmark*.

Witness the *Turks*.

Witness the *Dunkerkers*.

Witness all what losses we have sustained, how we are impaired in Munition, in Ships in Men.

It hath no contradiction we were never so much weakned, nor had less hope how to be restored.

These *Mr. Speaker* are our dangers, these are they do threaten us, and those are like that *Troiane* horse brought in cunningly to surprize us, in these do lurk the strongest of our Enemies ready to issue on us, and if we do not now the more speedily expell them, these are the sign, the invitation to others.

These will prepare their entrance that we shall have no means left of refuge or defence, for if we have these Enemies at home, how can we strive with those that are abroad? If we be free from these, no other can impeach us, our antient *English* virtue, that old *Spartan* valour cleared from these disorders being in sincerity of Religion once made friends with Heaven, having maturity of Councils, sufficiency of Generals, Incorruption of Officers, opulency in the *King*, Liberty in the People, repletion in Treasures, restitution of Provisions, reparation of Ships, preservation of Men.

Our Antient *English* virtue thus rectified I say, will secure us, and unless there be a speedy reformation in these: I know not what hopes or expectations we may have.

These

These things Sir I shall desire to have taken into consideration, That as we are the great Councel of the Kingdom, and have the apprehension of these dangers, we may truly represent them unto the King, wherein I conceive we are bound by a treble Obligation of duty unto God, of duty to his Majesty, and of duty to our Countrey.

And therefore I wish it may so stand with the wisdom and Judgement of the House, that they may be drawn into the body of a Remonstrance, and therein all humbly expressed with a prayer unto his Majesty for the safety of himself, and for the safetie of the Kingdom, and for the safety of Religion. That he will be pleased to give us time to make perfect inquisition thereof, or to take them into his own wisdom, and there give them such timely reformation as the necessity of the cause, and his Justice doth import.

And thus Sr. with a large affection and Loyalty to his Majesty, and with a firm duty and service to my Countrey, I have suddenly, and it may be (with some disorder) expressed the weak apprehension I have, wherein if I have erred I humbly crave your Pardon, and so submit to the censure of the House.

## A Report from the COMMITTEE for Trade, 4. June 1628.

**I**N all other parts of Christendom there is great care, with much cost to raise Forts and walled Towns, onely for defence in time of War, and great charge to make Engines, and Weapons to offend the Enemy, of little or no use in time of Peace.

Whereas in *England* the Rampires, and Bulwarks, and Ships, and those also for offence of the Enemy, our best Weapons are Engines.

And this also in time of Peace best instruments of our Wealth, even as usefull as the Plough or Cart. But our shipping and our strength of Marriners within these three years is much decayed in general. But the decay of Trade through disturbance of the Merchant, by new Impositions and troubles, for want of a certain and well established book of Rate and Bill of Tonnage and Poundage, used heretofore to be given for guarding of the Seas.

By reason that the Seas are not guarded so, That our Coasts are infested, Our Fishermen driven from their Trade, And all our Coasting smaller shipping so disturbed, or taken, that in all parts of the Kingdom Sea-faring men give over, and the Seas are forsaken.

*More particularly.*

**T**Hat of our shipping of countenance of 100. Tuns or upwards, in the last three years there have been decayed, cast away and taken by the Enemy, between *Dover* and *New-Castle* 248. great ships,

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and



and with them proportionable number of Marriners, besides great and inestimable losses in less Vessels.

The causes whereof are diverse disorders in the late manning of Sea Affairs, before the employment of Ships and Men in his Majesties service.

**F**irst, By pressing and taking up Merchants ships, laden and bound out upon Voyages.

Secondly, By too frequent and general imbarques of shipping.

Thirdly, By taking out of ships unseasonably and unreasonably numbers, their best men, so forcing them ill Mann'd to Winter Voyages, &c.

Fourthly, By giving too little allowance of Wages, and 2. shill. per Tun for Freight of ships so taken, being but half that which Merchants allow.

Fifthly, By faults of inferior Ministers, men, and ships discharged after presses, or imbarques, are put to such charge that all decline not only the service, but the Trade of fishing and Sea-faring, Those that are really prest come far from the West, or the North to *Chatham* early in the year, and so with few Cloaths at the end of the Summer, nasty and weak, infect themselves and others.

*And in the employment.*

**F**irst, Are Commanders weak, young, ignorant Captains, &c.

Secondly, Are not provided of good Chirurgeons, and extraordinaries necessary for sick men.

Thirdly, Both ships and men contrary to the wisdom of former times are set out in Winter Voyages, long, and dark nights, and in our Northern Seas upon our dangerous Coasts, which have consumed a World of our Marriners, and discouraged others.

*After the employment.*

**F**irst, If the Marriners come home sick, no Hospitals, or Guest-Houses (as in other Countreys) to relieve them.

Secondly, If after all their miseries they return well, they are forced to sue for their due Wages till all they have is spent: Opportunity of new employment is lost, and themselves so discouraged, or put out of heart, that they either run away to the Enemy, or put themselves in forraign service, or betake themselves to any thing rather than the Sea life.

And

And those whose ships have been taken up 36. Moneths, some 30. some 20. some more, some less, still complain they are not paid the small freight of 2. shill. *per Tun*, at first promised.

By this means they have neither Money nor will to repair their ships, and none build new almost in any part, by reason of their discouragements, and those that do build, take care to build them unserviceable to avoid pressing, or taking up.

*The Remedies proposed in general.*

**F**irst, That the State would be pleased to give all possible countenance and comfort to all sorts of Merchants and Fishermen, both by better guarding of the Seas, by settling of the Book of Rates and Customes and duties, and by orderly regulating the many affairs according to the wisdom of former times imploying of skilfull and experienced men, and more particularly in allowing the old 5. shill. *per Tun*, to all such as shall build new serviceable ships of 150. Tuns or upwards, upon a Certificate made before the Judge of the Admiralty to be duly paid by some Collectors of the Customes without further trouble.

Secondly, To increase the freight from 2. shill. to 3. shill. *per Tun*, and Tonnage, to agree of the measure of Tonnage before the ships go into service, that upon return speedy payment may be made by some settled and published assignment.

Thirdly, That all arrearages due to owners of ships and Marriners that have served, may be paid out of the subsidies, and that a certain course of payment for the future may be established and published.

His Majesties Message to the House of  
Commons by the S P E A K E R ,  
6. June 1628.

**W**Hereas his Majesty understanding that you did conceive his last Message to restrain you in your just Priviledges, These are to declare his intention that he had no meaning of barring you from what hath been your Right, but in the manner to avoid all scandals on his Councel and actions past, his Ministers might not be, nor himself under their names taxed for their Councels, and that no such particulars should be taken in hand as would ask a longer time of consideration then what he hath already prefixed, and still resolves to hold, that so for this time Christendom might have notice of a sweet parting between him and his people, which if it falls out his Majesty will not be long from another meeting, when such grievances (if there be any) at their leasure and convenience may be considered.



## The K I N G s speech, 7 June.

**T**He answer I have already given you was made with so good deliberation and approved by the judgement of so many wise men, that I could not have imagined but it should have given you full satisfaction. But to avoid all ambiguous interpretations, and to shew you that there is no doubleness in my meaning, I am willing to please you in words as well as in substance. Read your Petition, and you shall have an answer I am sure will please you.

Then the Petition of Right was read, and again the whole P A R L I A M E N T spake.

**M**ay it please your most Excellent Majesty. The Lords spiritual and temporal, and Commons in Parliament Assembled: taking into their considerations that the good intelligence between your Majesty and your people doth much depend upon your Majesties answer unto their Petition of Right, formerly presented with an unanimous consent unto your Majesty. Do most humbly beseech your Majesty, that you will be graciously pleased to give a satisfactory answer thereunto in full Parliament.

*Soit droit fait come est desire par le Petition.*

Let right be done as is desired by the Petition.

## The K I N G again.

**T**His I am sure is full, yet no more then I granted you in my first answer, for the meaning of that, was to confirm all your Liberties, knowing according to your own protestations, that you neither mean nor can hurt my Prerogative. And I assure you, my Maxim is, that the peoples Liberties strengthen the *Kings* Prerogative, and the *Kings* Prerogative is to defend the peoples Liberties.

You see now how ready I have shewn my self to satisfie your demands so that I have done my part; wherefore if this Parliament hath not a happy conclusion, the sin is yours, I am free of it.

## The Motions of the Lower-house to the Higher, 7. June 1628.

**T**hat the new granted subsidies might be expended, especially upon three, or four of the most necessary of those Propositions propounded by his Majesty.

That they thought the most necessary imployments for the subsidies

sedies were, first the repairing of our new impaired Navy Royal, and the decayed Sea munition. Secondly, the re-edifying of the breaches made in our Forts and Haven Towns. Thirdly, by a supply and speedy aid and assistance for *Denmark*.

And whether in these they have judged rightly, or not the eminent and incroaching dangers of the present times might be a guide.

Also they made Declaration of the late Suits and Petitions of our Marriners, having lately received from them a Bill of grievances against the *Duke* for defect of payment, and that not of some few, but the whole Company. And that if herein they had not sudden redress they must be forced to right themselves upon him, as they shall finde opportunity.

Herein the Commons did declare that they thought themselves bound in Conscience (as helping the oppressed) and in pollicie in preventing all such combustions to patronize and cherish them. Also they thought it expedient that all such books as have been questioned in Parliament, and since tollerated might after the dissolving thereof, by the virtue of the former Protection, pass uncontroulable, and the Authors thereof without molestation.

In the interim, that this latter Proposition was debating upon just occasion being offered.

**Sr. THOMAS WENTVVORTH** delivered himself thus :

**R**ight wise, Right worthy, how many instigations importune the sequel of my words. 1. The equity of your proceedings. 2. The honnesty of my request, for I behold all your intendments grounded upon discretion and goodness, and your constitutions steered as well by charity as the extreamity of Justice.

This order (I say) and method of your proceedings, together with the opportunity offered of the subject in hand, have imboldned me to sollicit for an extention of the late granted Protections in general. The Lawfulness and honnesty of the Proposition depends upon these particulars. 1. The present troubles of the parties protected, having run themselves into further, and almost irrecoverable hazard by presuming upon, and feeding themselves with the hopes of a long continuing Parliament, let the second be this consequence. That which is prejudicial to the most ought to administer matter of advantage to the rest. Sith then our interpellations and disturbances amongst our selves are unpleasing to all most all, if any benefit may be collected, let it fall upon these, for I think the breach of our Sessions can befriend none but such, nor such neither, but by means of this grant before hand. And because it is profitable that his Majesty may cause a remeeting the next Michalmas, let thither also reach there pre-



scribed time for Liberty, and that till then there protections shall remain in as full virtue and Authority as if the Parliament were actually sitting.

*This Speech at the first bred some distaste, but afterwards seriously weighing the premises, they easily, and at last generally conciscended, and so it is this day preferred to the Higher House.*

## The KINGS Message to the Lower House, by Sr. HUMFREY MAY 10. of June 1628.

**H**IS Majesty is well pleased that your return of Right and his answer, be not onely recorded in both Houses of Parliament, but also in all the Courts of *Westminster*, And that his pleasure is it be put in print for his Honour and the content, and satisfaction of his people, and that you proceed cheerfully to settle busineses for the good and reformation of the Common-wealth.

## Eight particulars all voted in the House of Commons, 11. June 1628.

**T**He excessive power of the Duke of *Buckingham*, and the abuse thereof, is the chief and principal Cause of all the mischiefs that have happened to the *King* and *Kingdom*.

1. *Innovation of Religion.*
2. *Innovation of Government.*
3. *Disasters of designs abroad.*
4. *Not guarding of the Narrow Seas.*
5. *Not guarding the Forts.*
6. *The decay of Trade.*
7. *The decay of Shipping.*
8. *The want of Munition.*

## The first Remonstrance.

*Most dread Sovereign,*

**A**S with all Humble thankfulness, we your dutifull Commons now in Parliament Assembled, do acknowledge the great comfort we have had in the assurance of your Majesties pious and gracious disposition, So we think it our most necessary duty, being called

called by your Majesty to consult and advise of the great and urgent affairs of this Church and Common-wealth. And findeing them at this time in apparent danger of ruine and destruction, faithfully and dutifully to enform your Majestie thereof; and with bleeding hearts and bended knees to crave such speedy redress therein, as to your own wisdom (unto which we humbly submit our selves and our desires) shall seem most meet and convenient, what the multitude and potency of your Majesties Enemies are abroad, what be their malicious and ambitious ends, and how vigilant and constantly industrious they are in pursuing the same, is well known to your Majesty. Together with the dangers threatned thereby to your sacred Person and your Kingdoms, and the calamity which hath already fallen, and doth daily increase upon your Friends and Allies, of which we are all well assured your Majesty is most sensible, and will accordingly in your own great wisdom, and with the gravest and most mature Council, according to the exigency of the times and occasions, provide by all means to prevent and help the same. To which end, we most humbly intreat your Majesty first, and especially to cast your eyes upon the miserable condition of this your own Kingdom of late so strangely weakned, impoverished, dishonoured, and dejected, That unless through your Majesties most gracious wisdom, goodness, and Justice it be speedily raised to a better condition, it is in no little danger to become a sudden prey to the Enemies thereof. And of the most happy and flourishing, to be the most miserable and contemptible Nation in the World. In the discovery of which dangers, mischiefs, and inconveniences lying upon us, we do freely protest that it is far from our thoughts to lay the least aspercion upon your Majesties sacred Person, or the least scandal upon your Government, for we do in all sincerity, and with all joyfulness of heart, not onely for our selves, but in the name of the whole Commons of *England*, whom we represent, ascribe as much honour to your Majesty, and acknowledge as much duty as a most loyal and affectionate people can do unto the best *King* (for so you are) and so you have been pleased abundantly to expreis your self this present Parliament by your Majesties clear and satisfactory answer to our Petition of Right, for which, both we, our selves, and our posterities shall blefs God for you, and ever preserve a thankfull memory of your great goodness and Justice therein, and we do verily believe that all, or most of those things which we shall now present unto your Majesty, are either unknown unto your Majesty, or else by some of your Majesties Ministers, offered under such specious pretences, as may hide their own bad intentions, & ill consequence of them from your Majesty. But we assure our selves, that according to the good example of your most noble Predecessors nothing can make your Majesty (being a Wise and Judicious *Prince*, and above all things desirous of the welfare of your people) more in love with Parliaments then this, which is one of the principal  
ends



ends of calling them, that therein you may be truly informed of the State of all the severall parts of your Kingdom, and how your Officers and Ministers do behave themselves in discharge of the trust reposed in them by your Majesty, which is scarce possible to be made known unto you, but in Parliament as was declared by your blessed Father, when he was pleased to put the Commons, in Parliament assembled, in minde, that it would be the greatest unfaithfulness and breach of duty to his Majesty, and of the trust committed to them by their Countrey that could be, if in setting forth the grievances of the people, and the condition of all the parts of this Kingdom from whence they came, they did not deal clearly with him, without sparing any, how near and deer soever they were unto him, if they were hurtfull or dangerous to the Common-wealth.

In confidence therefore of your Majesties gracious acceptation in a matter of so high importance, and in faithfull discharge of our duties, we do first of all most humbly beseech your Majesty, to take notice that howsoever we know your Majesty doth with your Soul abhor that any such thing should be imagined, or attempted, yet there is a general fear conceived in your people of some secret working and combination to introduce into this your Kingdom innovacion, and change of our holy Religion, more precious to us then our lives, and what ever this World can afford. Our fears and jealousies herein are not meerly conjectural, but arising out of such certain and visible effects as may demonstrate a true and real cause. For notwithstanding the many good, and wholsom Laws, and provisions made to prevent the increase of Popery within this Kingdom, and notwithstanding your Majesties gracious and satisfactorie answer to the Petition of both Houses in that behalf presented unto your Majestie at *Oxford*, we finde there hath followed no good execution or effect, but on the contrary (at which your Majestie out of the quick sence of your own Religious heart cannot, but be in the highest measure displeased) those of that Religion do finde extraordinarie favours and respects in Court from Persons of great quality and power there, unto whom they continually resort, and in particuler to the Countess of *Buckingham*, who her self openly professing that Religion is a known favourer and supporter of them that do the same, which we well hoped upon your Majesties answer to the aforesaid Petition of *Oxford* should not have been permitted, nor that any of your Majesties Subjects of that Religion, or justly to be suspected, should be entertained in the service of your Majesty, or of your Royal consort the *Queen*, some likewise of that Religion have had Honours, Offices, and places of Command and Authority lately conferred upon them. But that which striketh the greatest terrour into the hearts of your Loyal Subjects concerning this point, is, That Letters of stay of Legal proceedings against them have been procured from your Majesty (by what indirect means we know not) and Commissions under the great Seal granted and executed

cuted for compositions to be made with Popish Recusants, with inhibitions and restraints both to the Ecclesiastical and Temporal Courts and Officers, to intermeddle with them, which is conceived to amount to no less then a toleration, odious to God, full of dishonour and extreame disprofit to your Majestie, of great scandal and grief to your good people, and of apparent danger to the present estate of your Majestie and of this Kingdom, their numbers, power and insolencies dayly increasing in all parts of your Kingdom, and in special about *London* and the Suburbs thereof, where exceeding many families of them do make their aboad, and publickly frequent Malls at *Denmark House* and other places, and by their often meetings and conferences have opportunities of combining their counsels and strength together, to the hazard of your Majesties safety and the State, and especially in these doubtful and calamitous times.

And as our fear concerning change or subversion of Religion is grounded upon the dayly increase of Papists, the open and professed enemies thereof, for the reasons formerly mentioned, so are the hearts of your good Subjects no less perplexed, when with sorrow they behold a dayly growth and spreading of the faction of the *Arminians*, that being (as your Majestie well knows) but a cunning way to bring in Popery, and the professors of those opinions the common disturbers of the Protestant Churches, and Incendiaries in those States wherein they have gotten any head, being Protestants in shew, but Jesuits in opinion and practise, which caused your royall Father, with so much pious wisdom and ardent zeal, to endeavour the suppressing of them, as well at home as in the neighbour Countries. And your gracious Majestie imitating his most worthy example, hath openly and by your proclamation declared your dislike of those persons, and of their opinions; who notwithstanding are much favoured and advanced, not wanting friends even of the Clergy near to your Majestie, namely Doctor *Neal* Bishop of *Winchester*, and Doctor *Lawd* Bishop of *Bath* and *Wells*, who are justly suspected to be unsound in their opinions that way. And it being now generally held the way to preferment and promotion in the Church, many Scholars do bend the course of their studies to maintain those Errors. Their books and opinions are suffered to be printed and published, and on the other side the impression of such as are written against them, and in defence of the Orthodoxall Religion, is hindered and prohibited. And (which is a boldness almost incredible) this restraint of Orthodox books is made under colour of your Majesties formerly mentioned proclamation, the intent and meaning whereof we know was quite contrary. And further to increase our fears concerning Innovation in Religion, we finde that there hath been no small labouring to remove that which is the most powerfull means to strengthen and increase our own Religion, and to oppose both these, which is the diligent teaching and instructing the people in the



true knowledge and worship of Almighty God, and therefore means have been sought out to depress and discountenance pious, painfull and Orthodox preachers, and how conformable soever and peacefull in their disposition and carriage they be, yet the preferment of such is opposed, and instead of being encouraged they are molested by vexatious courses and pursutes and hardly permitted to lecture, even in those places where are no constant preaching Ministers, whereby many of your good people (whose souls in this case we beseech your Majestie to comiserate) are kept in ignorance and are apt to be easily seduced to error and superstition.

It doth not a little also increase our dangers and fears this way to understand the miserable condition of your Kingdom of *Ireland*, where without controul the Popish Religion is openly professed and practised in every part thereof, Popish Jurisdiction being there generally exercised and avowed, Monastries, Numeries, and other superstitious houses newly erected, redified and replenished with men and women of several orders, and in a plentiful manner maintained in *Dublin*, and most of the great Towns and divers other places of the Kingdom, which of what ill consequence it may prove, if not seasonably exprest we leave to your Majesties wisdom to judge, But most humbly beseech you (as we assure our selves you will) to lay the serious consideration thereof to your royal and pious heart, and that some timelie course may be taken for redress therein.

And now if to all these your Majestie will be pleased to add the consideration of the circumstance of time, wherein these courses tending to the destruction of true Religion within these your Kingdoms have been taken here, even then when the same is with open force and violence prosecuted in other countries, and all the reformed Churches of Christendom either depressed or miserably distressed, we humbly appeal unto your Majesties *Princely* Judgment whether there be not just ground of fear that there is some secret and strong cooperating here with the enemies of our Religion abroad for the utter extirpation thereof, And whether of these courses be not speedily redrest, and the profession of true Religion more encouraged, we can expect any other then misery and ruine speedily to fall upon us, especially if besides the visible and apparant dangers wherewith we are compassed round about, you would be pleased piously to remember the displeasure of Almighty God alwaies bent against the neglect of his holie Religion, the stroak of whose divine Justice we have alreadie felt and do still feel in great measure.

And besides this fear of Innovation in Religion, we do in like faithfull discharge of our duties most humbly declare to your Majestie, that the hearts of your people are full of fear of Innovation and change of government, and accordingly possesse with extream grief and sorrow; yet in this point by your Majesties late answer to our Petition of right touching our libertie, much comforted and  
raised

raised again out of that sadness and discontent which they generally had conceived throughout your whole Kingdom at the undue courses which were the last year taken for raising of money by loans, then which (what ever your Majestie hath been enformed to the contrarie) there was never mony demanded or paid with greater grief and general dislike of all your faithfull Subjects, though manie partly out of fear and partlie out of other respects, yet most unwillinglie were drawn to yield to what was then required.

The billiting of souldiers did much augment both their fears and griefs, wherein likewise they finde much comfort upon your late gracious Answer to our Petition of right and to that we presented to your Majestie concerning this particular, yet we humbly beseech your Majestie that we may inform you that the still continuance and late re-enforcing of the numbers of those Souldiers, the conditions of their Persons (many of them being not Natives of this Kingdom, nor of the same but of an opposite Religion, the placing of them upon the Sea coast, where making head among themselves, they may unite with a Popish partie at home if occasion serve or joyn with an envading Enemy to do extream mischief, and that they are not dismissed, doth still minister cause of jelousie to your loving Subjects, for that these Souldiers cannot be continued without exceeding great danger of the peace and safetie of your Kingdom.

The report of the strange and dangerous purpose of bringing in of *Germain* horses and Riders would have turned our doubts into dispaire, and our fears into a certainty of confusion, had not your Majesties gracious Message (for which we give you humble thanks) comforted us, by the assurance of your Royal word that they neither are nor were intended by your Majestie for any service in *England*, but that they were designed for some forraign employment, yet the sight of the privie seal, by which seemeth they were to be levied for this place, the great some of money, which upon examination we found had been made ever for that purpose, That much about the same time there was a commission under the great Seal granted to the Lords and others of your privie Councel to consider (as of other wayes of raising of monies) so particularlie by imposition, gave us just cause to suspect that what ever was your Majesties own gracious intention, yet there wanted not those that under some colourable pretence might secretlie by this (as by other wayes) contrive to change the frame both of Religion and Government, and thereby undermine the safetie of your Majestie and your Kingdoms, these men could not be ignorant that the bringing in of strangers for aid hath been pernicious to most States where they have been admitted, but to *England* fatall. We do blese God that hath given your Majestie a wise and understanding heart, to discern of the mischief of such courses, and that such power produceth nothing but weakness and calamitie. And, we beseech your Majestie to pardon the vehemencie



mencie of our expressions, if in the loyall and zealous affections we bear to your Majestie and your service, we are bould to declare to your Majestie and the whole world, that we hold it far beneath the heart of any free *English* man to think that this victorious Nation should now stand in need of *Germaine* Souldiers to defend their own *King* and Kingdom.

But when we consider the courses formerlie mentioned concerning the undermining of Religion, and these things tending to an apparant change of government, the often breach of Parliaments, where by your Majestie hath been deprived of the faithfull Counsels and free aids of your people, The taking of tonnage and pondage, without any grant thereof by Act of Parliament ever since the beginning of your Majesties raig to this present, The standing commission granted to the *Duke of Buckingham* to be General of an Army within the land in the time of peace, The displacing of faithfull and sufficient Officers and Ministers, some from Judicial places, and others from the Offices and Authorities which formerly they held in the Common-Wealth, we cannot but at the sight of such an approaching desolation, as must necessarilie follow these courses, out of the depth of sorrow lift up our cries to Heaven for help, and next under God humbly applie our selves to your sacred Majestie, and falling down at your feet do beseech you to harken to the voice of all your people, who if you could hear so many thousands speaking altogether, would all joyntly implore speedy help and reformation.

And if yet your Majestie will be pleased to take a further view of the present estate of your Realm, we do humblie pray you to consider whether the miserable disasters and ill success that hath accompanied all your late designs and actions, particularly those of *Cales*, the Isle of *Rhee*, and the last expedition to *Rochel*, have not extreamlie wasted that stock of honour that was left unto this Kingdom, sometimes terrible to all other Nations, and now declining to contempt beneath the meanest, together with our honour we there lost, those, and that not a few, (who had they lived) we might have had some better hope of recovering it again, Our valiant Collonels, Captains and Commanders and many thousand common Souldiers, and Marriners, though we have some cause to think that your Majestie is not as yet rightlie enformed thereof, and that of six or seaven thousand of your Subjects lost at the Isle of *Rhee*, your Majesty received information but of a few hundreds: And that all this dishonour and loss hath been purchased with the Consumption of above a million of Treasure; many of your Forts are exceeding weak and decayed, and want both men and munition. And here we cannot but with grief consider and complain of a strange providence, (we think your Majestie will call it treacherie,) That your store of powder, which by order of your privy Councel, dated the tenth day

day of *December*, 1626. should be constantly three hundred last, besides a continual supplie of Twentie last a moneth for ordinarie expences, and were now fit (as we conceive) to be double. That proportion is at this time in the Tower (the present warrants being served) but nine last and forty pound in all, which we tremble to think of. And that notwithstanding this extream scarcitie of powder, great quantities have been permitted to be sould out of your Majesties store to particular persons for private gain, whereof we have seen a certificate of fortie six last sould since the fourteenth of *January* last, And your Majesties store being unfurnished of powder, which by a contract made with Mr. *Evelin* by the advise of the Lords in Parliament, ought to be supplied monthly with twentie last, at the rate of 3 *l.* 10. *s.* 10. *d.* the barrel, Your Majestie hath been forced to pay above 7. *l.* a barrel for powder to be brought from beyond the Seas, for which purpose 12400. *l.* hath been imprest to Mr. *Burlamacho* the last year, and that powder not so good as that which by contract your Majestie should have of your own by one third part, All which are most fearfull and dangerous abuses.

But what the poverty, weakness and miserie your Kingdom is now grown unto by decay of trade, by destruction and loss of ships and Marriners within these three last years, we are almost afraid to declare. And could we have been assured that your Majesty should any other way have had a true information thereof, we should have been doubtfull to have made our weakness and extreamity of misfortune in this kinde to appear. But the importunate and most pitifull complaints from all the parts of your Kingdom near adjoyning to the sea in this kinde would rend (we think) the strongest heart in the world with sorrow: And the sence we have of the miserable condition your Kingdoms is in by reason thereof, especially for that we see no present possible means (being now shortly to end this session) how to help the same, adds such a weight of grief unto our sadd thoughts as we have no words to expresse it, But for your Majesties more exact reformation herein, we beseech you be pleased to peruse the Kallandar of particulars, which with this our Remonstrance, we most humbly present unto your Majestie.

One reason (amongst many others of this decay of trade and loss of ships & Marriners) is the not guarding seas, the Regalitie whereof your Majesty hath now in a manner wholly lost, and that wherein a principal part of the honour and safetie of this Kingdom heretofore consisted (in having the absolute command of the seas) is now so neglected, that the Town of *Dunkerk* doth so continuallie beat, robb, and spoil your Subjects, that we can assure your Majestie if some present and effectual remedie be not forthwith provided, the whole trade of this Kingdom, the shipping and Marriners belonging thereunto will be utterly lost and consumed.

The principal cause of these Evils and Dangers we conceive to be



the excessive power of the *Duke of Buckingham*, and the abuse of that power. And we humbly submit it to your Majesties Excellent wisdom whether it can be either safe for your self or your Kingdom that so great power as rests in him, both by sea and land should be in the hands of any one Subject whatsoever. And as it is not safe, so sure we are it cannot be for your service, it being impossible for any one man to mannage so many and so weightie affairs of the Kingdom as he hath undertaken, besides the ordinary duties of those great offices which he holds, some of which well performed would require the time and industrie of the ablest man both for Council and action that your whole Kingdom could afford, especially in these times of common danger.

And our humble desire further is, that your most Excellent Majestie would be pleased to take it into your Princely consideration, whether in respect the same *Duke* hath so abused his power, it be safe for your Majestie and your Kingdoms to continue him either in his great offices of trust, or in his place of nearness and Council about your sacred person.

And thus in all humility aiming at nothing but the honour of Almighty God, the maintenance of his true Religion, the safetie and happiness of your most Excellent Majestie, and the preservation and prosperitie of this Church and Common-Wealth, we have endeavoured with faithfull hearts and intentions, and in discharge of the dutie we owe to your Majestie and our Countrey, to give your Majestie a true representation of our present dangers and pressing calamities, which we humbly beseech your Majestie graciously to accept, and to take the same to heart, accompting the safety and prosperity of your people your greatest happiness, and their love your richest treasure. A rufull and lamentable spectacle we confess it must needs be, to behold these ruines in so fair a house, so many diseases (and almost every one of them deadly) in so strong and well tempered a bodie as this Kingdom latelie was, yet we will not doubt but that God hath reserved this honour for your Majestie, to restore the safety and happiness thereof again as a work worthy so Excellent a *Prince*. For whose long life and true felicity we dayly pray, and that your fame and never dying glory may be continued to all succeeding generations.

A Kal-

A Kallender or Schedule of the shipping of this Kingdom, which have been taken by the enemy and lost at sea within the space of three years last past.

Taken by the Enemy.	{ Ships of the burthen of 100. Tuns, and upwards belonging to	{ London. Ipswich. Newcastle. Hull. Yarmouth, Aldborough.	{ The ships 77 and furniture vallued at	{ 62000. l.
Cast away	{ Ships of the same burthen belonging to the same places	{ 133	{ The ships and furniture vallued at	{ 100000. l.
Taken and cast away	{ Ships of the like burthen belonging to	{ Lynne. Bristol. Dartmouth. Portsmouth. Southampton. Weymouth. Exeter. Shorham. Harwich. Dover. Woodbridge. Sandwich.	{ 50 { The ships and furniture vallued at	{ 35000. l.
Taken by the Enemy	{ Ships of 100 Tonne belonging to	{ London. Newcastle. Hull. Boston. Yarmouth. Lynne. Aldborough. Dover. The County of Sussex Poole. Southampton. Weymouth. Exeter. Dartmouth. Bristol.	{ 130 { The vallued not certified	{ 197000. l.



*Fersey.  
Scarborough.  
Soul and  
Dunwich.*

*Portsmouth.  
Westchester.  
Milfordhaven  
Bridgwater.  
Bastable.  
Faymouth.  
Foy.*

Touching the  
Ports and  
Towns of

*Lynne Regis.  
Isle of Whight  
Colchester.*

great losses whereof no particular is given

*Fersey.*

*Low.*

*Whitby.*

*Bridlington.*

*Blackney.*

*Wels.*

*Orford.*

*Brightling-sea*

*Rochester.*

and divers o-  
ther small

Ports.

The goods and Merchandizes lost in the shipping aforesaid, and in Flemish bottoms freighted by *English* Merchants to be imported into this Kingdom are of exceeding great vulture, the certainty whereof cannot now be expressed.

*Onely one company of Merchants Trading to the Eastwards from  
London, Ipswich, Hull, and New-castle in half this space  
of time have lost one hundred thousand pounds taken  
by the Enemy.*

**A** Great Number of Marriners, also proportionable to this loss of shipping, have been taken and destroyed by the Enemy, and cast away through disorderly pressing, and forcing upon Winter voyages, besides many more by reason of their discouragements and want of pay have either run away to the Enemy or betaken themselves to forraign service, or to any other Trade rather than to lead a Sea-mans life to the inestimable loss and danger of the Kingdom.

The

## The Kings Answer to the Remonstrance the 17 of June 1626.

*Gentlemen.*

**U**Pon my Answer to your Petition of Right, I expected no such declaration from you, which containeth divers points of State, touching the Church and Common-Wealth. And I do conceive you do believe that I understood them better then your selves: but since the reading thereof, I perceive you understand these things less then I imagined, notwithstanding I will take them into my consideration as they deserve.

## The Kings Speech at the end of the Session, June 26.

**I**T may seem strange that I came so suddenly to end this Session, therefore before I give any assent to the Bills, I will tell you the cause, though I must avow, that I owe an accompt of my actions to none, but to God alone.

It is known to every one that a while ago the House of Commons gave me a Remonstrance, how acceptable every man may judge, and for the merrit of it, I will not call that in question, for I am sure no wise man can justifie it. Now since I am truely informed that a second Remonstrance is preparing for me, to take away the profit of my Tonnage and Poundage, one of the chief maintenances of the Crown, by alleadging, that I have given away my right thereof by my answer to your Petition, This is so prejudiciall to me, that I am forced to end this Session some few hours before I meant it, being not willing to receive any more Remonstrances to which I must give an harsh answer.

And since I see to that end the House of Commons beginneth already to make false constructions of what I granted in your Petition, least it be worse interpreted in the Countrey, I will now make a Declaration concerning the true intent thereof.

The profession of both Houses in the time of hammering, this Petition was no was to trench upon my prerogative, saying they had neither intention, nor power to hurt it. Therefore it must, needs be conceived, that I have granted no new, but confirmed the ancient Liberties of my Subjects: yet to shew the clearness of my intentions, that I neither repent nor mean to recede from any thing I have promised you. I do here declare that those things which have been done, whereby many had some cause to suspect the libertie of the Subject to be trenched upon, which indeed was the first and true ground of the Petition, shall not hereafter be drawn in example for

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your



your prejudice and in time to come (in the word of a *King*) you shall not have like cause to complain.

But as for Tonnage and Poundage it is a thing I cannot want, and was never intended by you to ask, never meant I am sure by me to grant.

To conclude, I command you all that are here to take notice of what I have spoken at this time to be the true intent and meaning of what I granted in your Petition; but especially you my Lords, the Judges, for to you onely under me belongs the interpretation of Laws, for none of the Houses of Parliament either joynt or separate (what new doctrine soever may be raised) have any power either to make or declare a Law without my consent.

## The Second Remonstrance.

*Most Gracious Sovereign,*

**Y**Our Majesties most Loyall and Dutifull Subjects the Commons in this present Parliament Assembled, being in nothing more carefull then of the Honour and prosperity of your Majesty and the Kingdom, which they know doth much depend upon your happy Union and relation betwixt your Majestie and your people, do with much sorrow apprehend, that by reason the incertainty of their continuance, together the unexpected interruptions which have been cast upon them, and the shortness of time in which your Majestie hath determined to end this Session, they cannot bring to maturity and perfection, diverse busineses of waight which they have taken into consideration and resolution as most important for the common good; Amongst diverse other things they have taken in especial care for preparing a Bill for the granting to your Majestie such a subsidy of Tonnage and Poundage, as might uphold your profit and renew in as ample manner as their just care, and respect of Trade, wherein not onely the prosperity, but even the life of the Kingdom would permit, but being a work which will require much time and preparation by conference with your Majesties Officers and with the Merchants, not onely of *London*, but also of other remote parts, they finde it not possible to be accomplished at this time, wherefore considering it will be much more prejudiciall to the right of the Subject, if your Majestie should continue to receive the same without Authority of Law after the determination of a Session, then if there had been a recess by adjournment onely, in which case that intended grant would have related to the first day of the Parliament, and assuring themselves your Majesty is resolved to observe that your Royall answer, which you have lately made to the Petition of Right of both Houses of Parliament, Yet doubting lest your Majesty may be misinformed concerning the particular case, as if you might continue to  
take

take those subsidies of Tonnage and Poundage and other impositions upon Merchants, without breaking that answer they are forced by that dutie which they owe to your Majestie and to those whom they represent to declare; that there ought not any imposition to be laid upon the goods of Merchants exported or imported with common consent by Act of Parliament: which is the right and inheritance of your Subjects, founded not onely upon the most ancient and Original constitution of this Kingdom, but often confirmed and declared in divers Statute Laws. And for the better manifestation thereof, may it please your Majestie to understand, that although your Royall predecessors the *Kings* of this Realm have often had such subsidies and impositions granted unto them upon diverse occasions, especially for the guarding of the Seas, and safe-guard of Merchants; yet the Subjects have been ever carefull to use such cautions and limmitations in those grants, as might prevent any claim to be made, That such subsidies do proceed from duty, & not of free gift of the Subject, and that they have heretofore used to limmit a time in such grants, and for the most part but short, as for a year or two, and if it were continued longer, they have sometimes directed a certain space of cessation and intermission, that so the right of the Subject might be more evident. At other times it hath been granted upon occasions of War for a certain number of years, with proviso, that if the War were ended in the mean time, then the grant should cease; And of course it hath been sequestred into the hands of some Subjects to be employed for the guarding of the coasts, and it is acknowledged by the ordinary answers of your Majesties predecessors in their assent to the Bills of subsidy of Tonnage and Poundage, That it is of the nature of other subsidies proceeding from the good will of the Subject, Very few of your predecessors had it for life until the reign of *Hen. 7.* who was so far from conceiving he had any right thereunto, that although he granted commissions for collecting certain duties and customes due by Law, yet he made no commissions for receiving the subsidy of Tonnage and Poundage, untill the same was granted unto him in Parliament: Since his time all the *Kings* and *Queens* of *England* have had the like grants for life by the free love and good will of the Subject.

And whensoever the people have been grieved by laying any imposition or other charges upon their goods or Merchandizes without Authority of Law, which hath been very seldom, yet upon complaint in Parliament they have been forthwith relieved, saving in the time of your Royal Father, who having (through ill Councel,) raised the rates and charges of Merchandizes to that height, at which they now are, was yet pleased to yield so far to the complaint of his people, as to offer, that if the vallue of those impositions which he had set might be made good unto him, he would himself and his Heirs by act of Parliament be bound never to lay any other, which



offer the Commons at that time, in regard of the great burthen, did not yield unto. Nevertheless your Loyal Commons in this Parliament out of their especiall zeal to your service and special regard to your pressing occasions, to take into their considerations so to frame a grant of subsidy of Tonnage and Poundage to your Majestie, that both you might have been the better enabled for the defence of your Realm and your Subjects, from being secure from all undue charges, might be the more encouraged chearfully to proceed in their course of Trade (by the encrease whereof your Majesties profit, and likewise the strength of the Kingdom would be very much augmented, But not being now able to accomplish this their desire, there is no course left unto them without manifest breach of their duty both to your Majesty and the Countrey, save onely to make this humble declaration, that the receiving of Tonnage and Poundage and other impositions not granted by Parliament, is a breach of the fundamentall Liberties of this Kingdom, and contrary to your Majesties Royal Answer to the said Petition of Right. And therefore they do most humbly beseech your Majestie to forbear any further to receive the same, and not to take it in ill part from those of your Majesties loving Subjects who shall refuse to make payment of any such charges without warrant of Law demanded. And as by this forbearance your most Excellent Majestie shall manifest unto the world your Royal Justice in the observance of your Laws; So they not doubting, but that hereafter at the time appointed for their coming together again, they shall have occasion to expresse their great desire to advance your Majesties Honour and profit.

A Letter which was found among some Jesuits  
that were lately taken at London and addressed  
to the Father R E C T O R at  
B R U X I L L S.

Father *Rector*, let not the damp of astonishment seiz upon your most ardent and zealous soul in apprehending the sudden and unexpected calling of the Parliament: we have not opposed, but rather furthered it, so that we hope as much in this Parliament as ever we feared in *Queen Elizabeths* dayes, You must know the Council is ingaged to assist the *King* by the way of Prerogative in case the Parliamentary way should fall, You shall see this Parliament will resemble the Pellicane which takes a pleasure to dig out with her beake her own bowels. The election of the *Knights* and *Burgesses* have been in such confusion and by such apparant faction as that which we were wont to prove heretofore with much art and industry, (when the *Spanish* match was in treaty) now it breaks out naturally as a botch or boyl, and spets and spews out his own ranckor and venom, You  
may

may remmber how that most Famous and Immortall Statesman the Count of Gondomar fed King James his fancy and rocked him asleep with the soft and sweet sound of Peace to keep up the *Spanish* Treaty, Likewise we were much bound to some eminent Statesmen of our own Countrey to gain time, in procuring those advantageous Sessions of Arms in the *Pallatine*, and in admiring the worth and Honour of the *Spanish* Nation, and vilifying the *Hollanders*, remonstrating to King James that State was most ungratefull both to his predecessor *Queen Elizabeth* and his Sacred Majestie, that that State was more obnoxious then the *Turk*, and perpetually injured his Majesties Subjects in the *East Indies*, and likewise they had usurped from him the regalltie of the narrow seas in fishing upon the *English* coasts. Had the *Spanish* match taken effect, which was broken by the heat and violence of your furious Enemy the Duke of *Buckingham*, certainly if King James had diserted the *Hollanders*, Those great Statesmen had but one means to further their great and good designs, which was to seiz on King James, that none but the Puritans faction, that plotted nothing but Annarchy and his confusion were advanced to this most happie Union. We steered on the same course, and have made use of Annarchall election, and have prejudicated and anticipated the great one the Duke of *Buckingham*, that none but the Kings Enemies and his are chosen of the Parliament, and that the Parliament vows to begin where they have left, and will never give over till they have exterpated him and his posteritie. On the other side the same parties, who are to be admired for their indefigable industrie, incessantly foment revenge and jelousie in most of the Parliament men, and especially they work upon the pride and vain glory of such as have been imprisoned: acknowledging that they are the onely Martires and Worthies of the Country. *London* is as much distempered as ever *Florence* was, for the companies are at great odds, and the common Councel have opposed the Magistrates against the old custom in the election of the *Knights*, which hath bred a great heart burning in the City, that twice a day we can divulge what we list in *Pauls*, and upon the *Exchange*, & we have already rendered our irreconciliable Enemy the Duke as odious as a Toad, so the people are apt to believe any thing against him. We hope to be revenged on that Ball of Wilde-fire the Duke shortly, and quench his fury: you shall see the same sword that hath wounded us, drawn upon the wound with an oyl that we have annointed, it shall make us whole, and this shall be done: the Parliament is a great ship that hath dashed twice against the same rock, and we have so wrought upon the several complexions of Parliament-men in charging the most temperate and wiser sort, that the best way to overthrow the Duke, is by humble Petition to his Majestie. With the violent sort we have taken a contrary course, by working upon their passions and intreating their fancies with probabilities and presidents, which



never were heard of that favourites ; have but Parliament proofs, they may wrastle for a time, but at last the Parliament hath ever overthrow them upon their backs , we incourage them withall the wits we have to fall upon the *Duke* , and perswade them now is the time or never , the *King* being in such apparant necessity, insomuch that we assure our selves that God hath so forsaken and infatuated them, that they shall not onely strike and dash upon the same rock again ; but split and wrack in the bottomless sea of destruction , We have now many strings to our bow , and have strongly fortified our faction and have added two Bulwarks more , for when *King James* lived, you know , he was very vehement against *Arminianisme* (interrupted with his pestilent wit and deep learning) our strong designs in *Holland*, and was a great Friend to that old Rebell and Heretick the *Prince of Orange* , now we have planted that Sovereign drug *Arminianisme* which we hope will purge the Protestans from their *Hereſie* , and it flourishes and bears fruit in due season , The materials which builds up the other Bulwarks, are the projectors and beggerers of all ranks and quallities whatsoever, both those factions copulated to destroy the Parliament , and introduce a new species and form of government which is *Oligarchal* , Their factions serve as direct medicines and instruments to our ends, which is the universal Catholick Monarchy, our foundation is imitation, this Immitation will cause a relaxation, as so many violent diseases in the body, as the Sone, Gout, and to the speedy destruction or perpetuall and insufferable anguish of the body , which is worse then death it self. We proceed with counsel and mature deliberation when and where to work upon the *Dukes* jealousy, and revenge , In this we give the honour to those that merit it , which are the Church Catholicks. There is another matter of consequence which we take much into our consideration and tender care , which is to stave the Puritans that they hang not upon the *Dukes* ears, they are impudent subtile people, and 'tis to be feared least they should negotiate a reconciliation betwixt the *Duke* and the Parliament , It is certain the *Duke* would have reconciled himself to the Parliament at *Oxford* and *Westminster*, but now we assure our selves we have so handled the matter, that both the *Duke* and the Parliament are irreconciliable. For the better preventing of the Puritans , the *Arminians* have already blockt up the *Dukes* ears , and we have those of our own Religion , which stand continuall Centinel at the *Dukes* Chamber dore to see who goes in and out , we cannot be too carefull and circumspect in this regard. I cannot chuse but laugh to see how some of our coat have accooted themselves, you would scarce know them if you saw them ; and it is admirable how in speech & gesture they act the Puritans , the *Cambridge* Schollers to their wofull experience shall see, how we can ect the Puritans a little better then they have acted the *Jesuites*: they abused our Patron *S. Ignatius* in jeast, but we will make them smart

smart for it in earnest. I hope you will excuse my merry digression, for I confesse unto you, I am at this instant transported with joy to see how happily all instruments and means, as well great as less, operate to our purposes. But to return to the maine Fabrick, our foundation is *Arminianisme*, *Arminians* and projectors, as it appears in the premisses affecturation, this we see in force by all probable Arguments, we can in the first place take into our consideration the *Kings* Honour and his present necessity, and we shew how the *King* may free himself of his wardships as *Lewis* the 11. did, and for his great splendor he may raise a vast renew, and not beholding to his Subjects, which is by way of imposition and excise, we instance in the low Countries, and shew what a mass of monies they raised to pay their Armies by Sea and Land, meerly out of excise. Then our Church Catholicks shewed the means of this excise, which must be by a mercenary Army of Horse and Foot; For the Horse we have made it sure, they shall be forraigners and *Germans*, who will eat up the *Kings* renews and spoil the Countrey wheresoever they come, though they should to be paid: what havock will they make then when they are not dayly paid? surely they will do much more mischief: Then the Catholick Army of 10000. Horse and 20000. Foot shall be taken over, and in pay before the mercenary Army suffocate the Country, Then the Souldiers and projectors shall be paid out of the confiscation of the Country, to be had of the Souldiers, then they must consequently mutiny, which is equall advantagious to our superlative design, which is to work the Protestants as well as the Catholicks to wellcome a conquest, and this is by this means we hope instantly to dissolve Trade, hinder the building of shipping in propounding probable designs, and putting the stay upon expedition, as that of *Cales* taking away the Merchants ships and feeding them with hope to take the *West-Indies* Fleet, which is to seek a needle in a bottle of hay: his Catholick Majestie shall not want our best intelligence, besides he hath so many pistashawes and carvils which are spread abroad to discover, so you cannot be surprized in any harbor when Trade is ruined and shipping decayed, What will become of Noblemens and Gentlemens renews? the Yeamen and Formers, in which consists the infantry of this Kingdom, they will turn Rogues and resemble the object peasants in *France*, who are little better then slave. Trade and shipping is so much decayed already, that *London* is as it were besieged for want of fewel, Sea coles are at 30 shillings the chaldren. When things are brought to this perfection, which we hope will be by that time his Sacred Majestie hath settled his affairs in *Germany*; all the people in general will linger for a conquest, missing their means and renews, which should maintain and support them, according to their severall ranks and qualities; Then we assure our selves that the Lands which were rent and torn from the Church by that ravenous Monster *Hen. 8.* shall be restored by our  
mighty



mighty Protector his Catholick Majestie, to the recalling of those that are exiled, and deliver thousand of souls, which suffer persecution at home for the testimony of a good conscience. Joyn your prayers with ours, importuning the blessed *Virgin* and all the host of *Angels* and holy *Martyrs* to intercede for us, and we doubt not God will make hast to help us. Thus hoping to see the *Count Tillies* and *Marquess Spinola* here about *July* come twelve-moneth: I rest. In the meantime we pray for a happy success in *Germany* and the *Low-Countries*.

From the County, &c.

Your loving friends

I. W.

I. I.

## TOUCHING BARRONETS.

Motives to induce the KNIGHTS, CITIZENS and BURGESSES of the Commons House of Parliament, to Petition his Majesty for the revokeing and abolishing of the degree of BARRONETS, lately erected by his Highnesses Letters patents.

**F**irst because this new degree is offensive to the Nobility of the Realm, whose descendants in all reason ought to have prime eminency amongst the Gentry of this Kingdom, yet *Barronets* by these patents are to have precedency before the descendants, from the younger children of *Barronets*, *Earles*, *Dukes*, &c.

And to the order of Knight-hood, because that degree brings a personal dignity and springing out of virtue and desert, ought to be rancken next and immediately unto Barrony. Nevertheless the degree of *Barronets* is interposed between Barrony and Knight-hood.

And unto the Gentry of this Kingdom, because many of the *Barronets* and their descendants, being meanly descended, must have precedency before Gentry of Auncient Family, who by this Innovation will be much vilified, and of small reckoning in the Common-Wealth.

And unto the Magistrates of this Kingdom, who in respect of their offices, and place wherein they serve, as also the gravity and wisdom of their Persons in publick services and assemblies, have uled to have precedence before others: but now they must give place unto *Barronets* and their descendants, albeit some of them are,  
and

and many of them in time to come may be mean in birth, poor in state and of small worth and desert.

And unto the whole Communalty, whose descendants by their virtues and good fortunes may hereafter attain unto credit and reputation in the Common-Wealth.

*Inconveniencies that will arise to his Majestie and the State by reason of this new institution.*

**T**Here will be always dislike, envy and heart-burning between the Gentry of the Kingdom and the *Barronets*.

The Honour of Knight-hood, which was wont to encourage generous mindes unto high exploits, will now come into contempt, for be they of never so good prowess and valour, they must by this institution be inferior unto *Barronets* of small worth: Knight-hood hath been held a competent reward for forraign and home employments, and now his Majestie must be driven to search new ways for the recompence and satisfaction of such services. Gentlemen of Lively-hood and estimation will refrain his Majesties service in publick Assemblies for the Administration of Justice and otherwise, because they scorn to give place unto many of the *Barronets* whom they account their inferiors.

The reputation of Knight-hood and antiquity of descent hath in former times much advanced the Gentry so qualified in preferment to marriage who are very much prejudiced by this Hereditary Tittle: Great Noble men of this Kingdom have been degraded from their particular dignity, for want of means to support their Honours, but these *Barronets*, albeit they shall happen to be of no worth either in estate or desert, must have precedence before *Knights* of greater reputation.

Nothing is more commended then Honour springing out of virtue and desert, but to purchase Honour with money, as *Barronets* have done, is a temporall symmony and dishonorable to the States. The Communalty of the Kingdom ever since the first institution thereof hath consisted of certain degrees known and legall additions without change or alteration may by way of president alter the whole strain of the Common-Wealth. His Majestie by his prerogative Royall Creates, *Barons, Viscounts, Earls*, and many other degrees of Nobility as other his Ancestors and Predecessors have done, but the creation of this or any other in Communalty is not warranted by any former president usage or custom.



The Examination of ANDREVV Le BRUN  
 a Frenchman, Captain of the MARY of  
 ROCHEL, taken before ABRAHAM  
 CELMER Merchant, Major of the  
 Burrough of PLIMOUTH  
 16 May 1628.

**T**He examinee saith, that one Sunday being the 17 of *April* last past, he departed from *Plimouth* harbor in company with the *English* Fleet, whereof the *Eart* of *Denbigh* is General: and one the first day of *May* then following, the said Fleet arrived and came at Anchor at *Charleboy* in the rode of *Rochell* about 4 of the clock in the afternoone, where at the said arriuall they found 20 sail of the *King* of *France* his ships, whereof six were ships of about 300 Tuns, and the rest were smaller ships, and forthwith the said *French* ships put themselves to sail, and went in nearer to the Fortifications, where they also Anchored within two cannon shot of the *English* Fleet, And saith, that one of his Majestie ships shot off one peece of Ordinance, and no more, and the said *French* ships, as they returned from the *English* Fleet shot off oftentimes to them, and that the same Fleet remained there untill the 8 day of the same month of *May*, in which time there was a Wherry sent from the fleet into *Rochell*, wherein there were two *English* and one *French* man to inquire the State of the said Town, and that if they were there safe arrived, they should make a fire upon one of the Towers of the Town to give notice thereof, which accordingly they did, and also to make so many fires more one the Walls of the said Town as they have moneths victualls there, but they made not any answer thereof. Whence it was collected that they had but a small quantity of victualls, and said, that the said *English* (as he hath heard) promised to sink the said *French* ships when the waters did increase, and the winde came at *West North-West*, it being then neap tides, and about two days after the water did increase and the windes came accordingly, and being then intreated to fight with them, yet did not, but came away without fighting or releiving the Town, and saith, that one the 8 day of *May* the said *English* Fleet weighed Anchor, and set sail to depart, and 4 of the *French* great ships weighed Anchor also, and came after them, and shot divers times at the said Fleet, and the said Fleet shot at them again, and the said examinee came in company with the said Fleet as far as *Bell Isle*, where he departed from them one the 10 of this instant, and lastly saith, that during all the time the *English* Fleet was there, the Town of  
*Rochell*

*Rochel* shot to the King of France his ships and Fort, but chiefly upon the arrival of the said Fleet there.

## Articles wherewith MELVINE is charged.

1. **M**R. Melvine said that the Dukes plot was, that the Parliament should be dissolved, And that the Duke and the King with a great Army of Horse and Foot would War against the cominalty, and that Scotland should assist him, so that when War was amongst our selves the Enemy should come in, for this Kingdom is already sould to the Enemy by the Duke.
2. That the Duke had a stronger Council then the King, of which were certain Jesuites Scottish men, and that they did sit in Council every night from one of the clock till three.
3. That when the King had a purpose to do any thing of what consequence soever, the Duke could alter it.
4. That when the Ordinance were shipt at S. Martins, the Duke caused the Souldiers to go one, that they might be destroyed.
5. That the Duke said, he had an Army of 16000. Foot and 1200. Horse.
6. That King James his bloud and Marques Hambletons with others cries out for vengeance to Heaven.
7. That he could not expect any thing but ruine of this Kingdom.
8. That Prince Henry was poysoned by Sir Thomas Overbury and he himself served with the same sawce, and that the Earl of Somerset could say much to this.
9. That he himself had a Cardinal to his Uncle or near Kinsman, whereby he had great intelligence.

## A Privy Seal for the transporting of Horses 30 January 3. CAROLI.

**C**harles by the grace of God King of England, Scotland, France, and Ireland defendor of the faith, &c. To the Treasurer and under Treasurer of our Exchequer for the time being, greeting. We do hereby will and command you, out of our Treasury remaining in the receipt of the said Exchequer, forthwith to pay or cause to be paid unto Phillip Burlamachi of London Merchant, the sum of 30000 l. to be paid by him over by Bill of Exchange unto the Low-Countries and Germany unto our trustie and well be loved Sir William Balfoore Knight and John Dalber Esquire or either of them, for levying and providing certain numbers of Horse with Arms for Horse and Foot to be brought over into this Kingdom for our service, &c. For the levying and transporting of a 1000 Horse; 15000 l.



for 5000 Muskets, 5000 Corflets, 5000 Pikes, 10500 *l.* and for 1000 Curasiers compleat 200 Corflets and 200 Carbines 4500 *l.* Amounting in the whole to the said sum of 30000 *l.* And this our Letter shall be your sufficient warrant and discharge in this behalf. Given under our privy Seal at our Palace of *Westminster* 30. of *January*, in the third year of our reign.

## The Commission to the Lords and others of the privy Council concerning the present raising of money.

**C**HARLES by the grace of God King of *England Scotland France and Ireland*, defender of the faith, &c. To Sir *Thomas Coventry* Lord Keeper of the great Seal of *England*.

*James* Earl of *Marlburgh* Lord Treasurer.

*Henry* Earl of *Manchester* Lord President of the Council.

*Edward* Earl of *Worcester* Lord Keeper of the privy Seal.

*George* Duke of *Buckingham* our high Admiral of *England*.

*William* Earl of *Pembroke* Lord Steward of our Houshold.

*Phillip* Earl of *Mongommery* Lord Chamberlain of our Houshold.

*Theophilus* Earl of *Suffolk*.

*Edward* Earl of *Dorset*.

*William* Earl of *Salisbury*.

*Thomas* Earl of *Exceter*.

*John* Earl of *Bridgwater*.

*James* Earl of *Carlile*.

*Henry* Earl of *Holland*.

*William* Earl of *D.*

*George* Earl of *Totnes*.

Sir *George Hay* Knight Lord Chaunceller of *Scotland*.

*William* Earl of *Morton*.

*Thomas* Earl of *Kelly*.

*Thomas* Earl of *Melros*.

*Edward* Viscount *Conway* one of our principall Secritaries of State.

*Edward* Viscount *Wimbleton*.

*Oliver* Viscount *Grandison*.

*Henry* Viscount *Falkland* Lord Deputy of *Ireland*.

To the Lord Bishop of *Winchester*.

*William* Lord Bishop of *Bath and Wells*.

*Fulk* Lord *Brook*.

*Dudly* Lord *Carleton* vice Camberlain of our Houshold.

Sir *Thomas Edmonds* Treasurer of our Houshold.

Sir

Sir *John Savill* Comptroller of our Houshold.

Sir *Robert Nawton* Master of our Court of Wards.

Sir *John Cooke* one of the principal Secritaries of our State.

Sir *Richard Weston* Chancellor and under Treasurer of our Exchequer.

Sir *Julius Caesar* Master of the Roll.

Sir *Humfry May* Knight Chancellor of our Dutchy of *Lancaster*;

GREETING.

**W**Hereas the present Conjuncture of the pressing affairs of Christendom and our own particular interest in giving assistance to our oppressed Allies, and for the providing for the defence and safety of our own dominions, And people do call upon us to neglect nothing that may conduce to those good ends; And because monies, the principall sinews of War, and one of the first and chiefeft in all great preparations and actions, necessary to be provided in the first place, and we are carefull the same may be raised by such ways as may best stand with the State of our Kingdoms and Subjects, and yet may answer the pressing occasions of the present times. We therefore out of the experience we have had, and for the trust we repose in your wisdoms fidelities and dutifull care of your services, and for the experience you have of all great causes concerning us and our State, both as they have relation to forraign parts abroad, and as to our Common-Wealth and People at home: Ye being Persons called by us to be of our privy Councel, have thought fit amongst those great and important matters, which somuch concern us in the first and chiefeft place, to recommend this to your speciall care and dilligence, And we do hereby authorize and appoint, and stricktly will and require you speedily and seriously to enter into consideration of all the best and speediest ways and means yee can for raising of money for the most important occasions aforesaid, which without extreamest hazard to us, our dominions and people, and to our friends and Allies, can admit of no long delay, The same to be done by imposition or otherwise, as in your wisdom and best Judgments ye shall finde to be most convenient in a case of this inevitable necessity, wherein form and circumstance must be dispensed with, rather then the substance be lost or hazarded. And herein our will and pleasure is, that you, or as many of you as from time to time can be spared from attendanc upon our Person, or other our necessary services, do use all dilligence by your frequent meetings and serious consultations, and when you have brought any thing to maturity, ye make report thereof unto us, and advertise us of those things ye shall either resolve upon or thinck fit to represent unto us, for the advancement of this great service, which with the greatest affection we can, we recommend to your best care and Iudgement, Whereof you must not fail as you tender our honour, and the honour and safety of our Dominions and People; and for the doing hereof, these presents shall be to you and



every of you a sufficient warrant. In witness whereof, we have caused these our Letters to be made Letters Patents.

*Witnes our selfe at Westminster the last day of  
February in the third yeare of our Raigne.*

Per ipsum Regem.

Articles to be propounded to the Captains and Masters as well English as French, touching the service in hand at R O C H E L

4. May 1628. the ships rideing before the Town.

1. **W**Hether in your opnion and judgments, by the means and strength we have, the Floates and Pallizadoes may be forced, and the entrance into the Town may be thereby made for the victuallers.
2. If you shall think it fit, what in your opinions will be the best and readiest way to open the same.
3. Whether you hold it fit to send in the victuallers at the same instant, together with the fire ships and barks, considering that if it should not take effect, instead of relieving the Town, we relieve the Enemy.
4. If in this attempt part shall get through, and the greater part be taken by the Enemies, whether the service or dishonour will be greater.
5. If in case you think it fit to give the attempt, whether you hold it likewise necessary that the Merchant ships should second, or follow them, and how far you hold it safe for them to go.
6. Whether the more to countenance the service, you hold it fit for the *Kings* ships, to put themselves under sail being they are to be exposed to shallow water and a narrow Channel and to lye under command of many of the Enemies Forts, where, by an unlucky accident many of them may be brought on ground and miscarry.
7. You are here to deliver your opinions upon your allegiance, the rather because the onely service the *Kings* ships there can do, is to cause the Enemies Fleet, which rides without, to retire further in, and whether it will be a means to weaken the Pallizadoes or any way open the passage to your judgments.

The

## The answer to the Articles propounded by the Lord General and the rest of the Councel of War.

1. **T**O the first, we answer that by reason of the shallowness of the water the ships will not be able to come so near as the Pallizados, whereby to make any breach through for the victuallers.

2. To the second, we answer that nothing can be done by our forces here to gain any passage to the Town.

3. To the third, we answer that by reason our forces cannot come so near the Pallizadoes to make any breach, then it is not for the victuallers to venter in with their fire-ships; so no breach being made, the victualler will come into the Enemies hands.

4. To the fourth, we answer that the dishonour will be greater if there be any loss in that case.

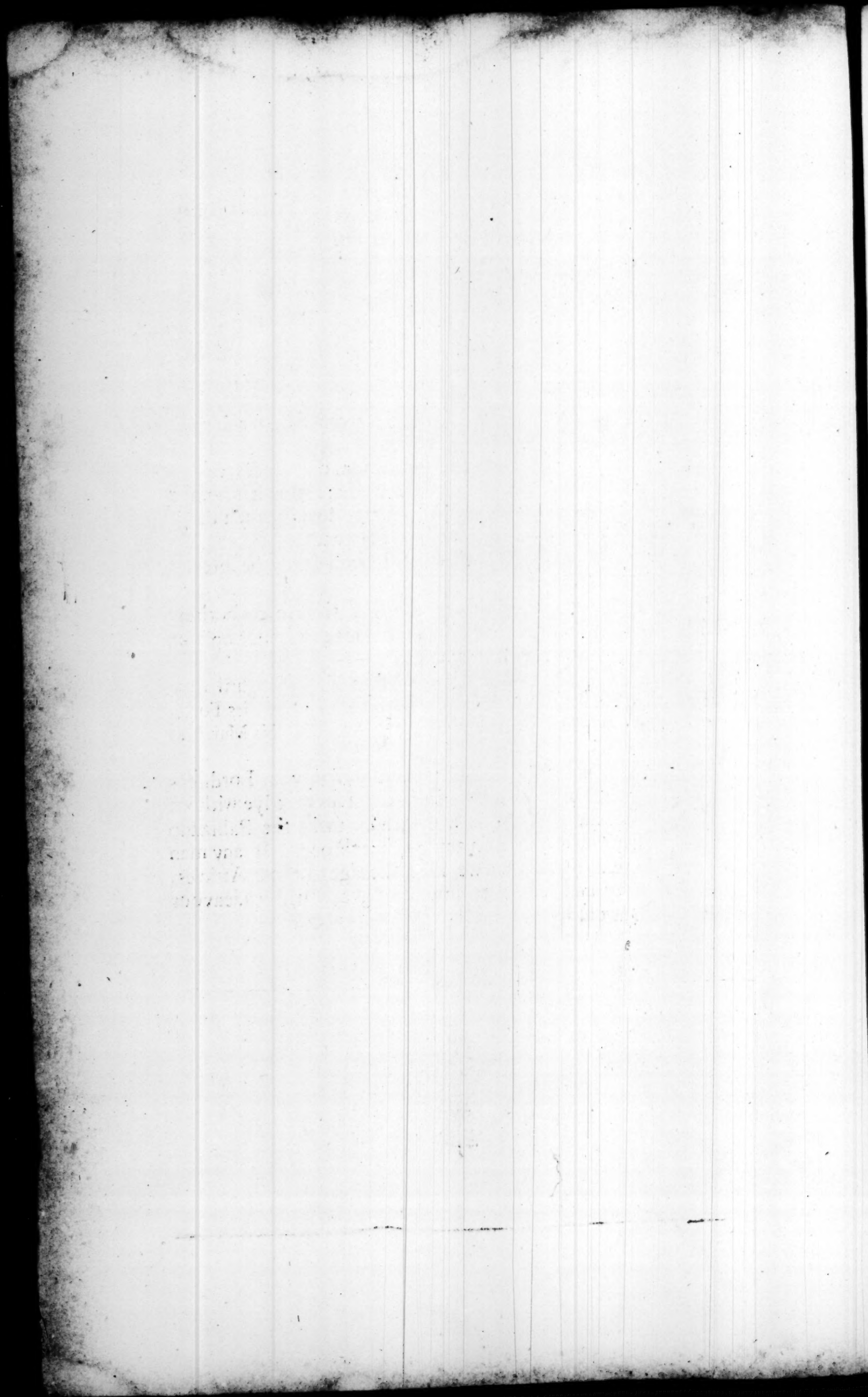
5. To the fifth, we answer that in regard of their forces both by Sea and Land that no breach can be made as above said, our opinion is, it will be to no purpose to send any ships in.

We hold it not fitting to bring his Majesties ships, in regard they shall be exposed to shallow water and danger of our Enemies Forts, upon the Land; which will be an hazard and loss of his Majesties ships.

To the seventh, and the conclusion mentioned in your Lordships Articles, we answer, that if we should force the ships that lye without the Pallizado on the ground; It will rather make the Pallizado more strong than any way to gain any passage through. If any man can shew any better reasons than we here alleadge to those Articles, we shall be ready and willing to imbrace it, and will endeavour our selves so far as our lives.








THE  
TRANSACTIONS  
Of the second  
SESSIONS  
IN  
PARLIAMENT,  
ANNO 1628.



us having finished the first *Session* of this unhappy Parliament, where the seeds were sown of those discontents, which afterwards grew up, and lately have been reaped almost to the ruine of our Nation;

Now followeth the *Breviary* or *abstract* of the second *Session*, little different from the former in sad success: But we must confess that those two *Traets* (though joyned in one volume for the perfecting of the *History*) are not the *Sons* of the same *Father*, proceed not from the *observations* and *collections* of the same *Authour*.

And as they differ in the *Authour*, so also in the fashion and quantity thereof: the former *Session* may be said to be done at length, this in figures, the former had the maine *Mass* and *Bulk*, this the *spirits* and *infusions* of the passages therein.

Yet as a low man is as much man, though not so great a man as one of a higher stature, so may I say there is as certain truth in this as in the former relation though there be not so much of it. I mean it is as faithfully though not so fully reported. Indeed the conscientious Reader being a true *Englishman* may here satisfie himself with the sadness of the transactions as shortly summed up, who otherwise might surfet with sorrow, if every particular were related in its full dimensions.

Thus commending both this and the other to the careful perusing of the judicious Reader, I fear not his departing from this Book with an unsatisfied, who cometh thereunto with an unprejudiced judgment.

A true



A true  
**RELATION**

Of every days proceedings since the beginning of this *SESSION*, and what was spoken by every man.

*Tuesday January 20.*



Pon *Tuesday* being the first day of the Parliament, nothing was done, but the setting of the Commitees.

*Wednesday 21.*

**U**Pon this day it was ordered that Mr. *Selden* and others should see if the Petition of Right and his Majesties answer thereunto were inrolled in the Parliament Rolles; and the Courts at *Wesminster*, as his Majestie sent them word the last Session they should be; and also in what manner they were entered, which was done accordingly: and Mr. *Selden* made report to the house, that his Majesties speech made the last day of the Session in the upper House, is also entered by his Majesties command.

Mr. *Pym*,

**H**ereupon Mr. *Pym* moved that the debate hereof should be deferred till *Tuesday* next, by reason of the fewness of the House.

Sir *John Elliot*,

**T**O which Sir *John Elliot* answered, this, is now raised, concerns the honour of the House and the liberty of the Kingdom, it is true; it deserves to be deferred till there be a full House, but it is good to prepare things. I finde it is a great point, I desire a select Committee may enter into consideration thereof, and also how other liberties of the Kingdom be invaded. I finde in the country the Petition of Right Printed indeed, but with an answer that never gave any satisfaction: I desire a Committee may consider thereof, and present it to the House, and that the Printer be sent for to give



satisfaction to the House , by what warrant it was printed. Which was ordered.

Mr. *Shelden*,

**F**OR this Petition of Right, It is known how lately it hath been violated, since our last meeting. The liberties for life, person, and free-hold, how they have been invaded ; and have not some been committed contrary to that ? Now we knowing these invasions, must take notice of it. For liberties, for state, we know of an order made in the *Exchequer*, that a Sheriff was commanded not to execute a replevin, and mens goods are taken and must not be restored, whereas no man ought to lose life, or limb but by the Law, hath not one lately lost his ears (meaning *Savage*) that was censured in the *Star-Chamber* by an arbitrary sentence and judgement ? Next they will take away our Arms, and then our lives. Let all see we are sensible of these customes creeping upon us : let us make a just presentation hereof to his Majesty.

*Norton* the King's Printer was brought to the Barr, and asked by what warrant the additions to the Petition were printed. He answered, that there was a warrant (as he thought) from the King himself. And being asked whether there were not some Copies printed without additions, he answered, there were some, but they were suppressed by some warrant.

Sir. *John Elliot*,

**D**ESired some clearer satisfaction might be made, and that he might answer directly by what warrant. Whereupon he was called in again : who said, he did not remember the particular, but sure he was there was a warrant.

*Tuesday 22.*

**O**NE Mr. *Roules* a Merchant, and a Member of the House, informed the House that his goods were seized by the Customers for refusing to pay Custome by them demanded, although he told them he would pay what was adjudged by Law. Whereupon, Sir *Robert Phillips* spake as followeth.

Sir *Robert Phillips*.

**B**Y this information you see the unfortunateness of the times, and how full time it was that this Assembly should meet to serve his Majesty, and to preserve our selves, and I am confident we come hither with fullness of both, and all shall conduce to a happy conclusion, and to the King's honour and our own safety: Great and weighty things wound deep. Cast your eyes which way you please, and you shall see violations on all sides: look at the liberty of the subject, look on the priviledge of this House, let any say if ever he saw the like

like violation by inferiour Ministers, that over-do their command, nay they say, if all the Parliament were in you, this would we do and justifie. If we suffer the liberty of this House to wither, out of fear, or complement, we give a wound to the happiness of this Kingdom: Here the course of justice was interrupted, and order in the *Exchequer* was made for stay of the goods; since here is a seizure (upon the approach of Parliament) of goods amounting to 5000. *l.* for a pretended duty of 200 *l.* In the sight of *King James*, by reason of the sickness that then was, the Parliament was prorogued, and then there was some boldness to take this Tonnage and Poundage, for there was no right to demand it. Let us proceed with affection of duty to make up breaches: let a Committee consider of these proceedings.

Mr. *Littleton*,

**H**ere Mr. *Littleton* made a short speech to second him, and all to the same purpose: but for brevity sake I omit it.

Mr. *Littleton*, we have had good admonitions, and have followed them, we have moderation preached unto us in *Parliament*, and we follow, I would others did the like out of *Parliament*. Let the parties be sent for that violated the liberties of the *Parliament*, and have their doom.

This Speech was occasioned by Secretary *Cook*, who in his Speech desired moderation might be used.

Sir *John Elliot*,

**I** See by this Relation what cause we have to be tender of the liberty of the Kingdom, and this House, and yet withall to return that moderation, as to give satisfaction to the world, that our hearts are fixed to serve his Majesty, and to free us from offer of jealousy, 3 Things are involved in this complaint.

First, the Right of particular Gentlemen.

Secondly, the Right of the Subject.

Thirdly, the Right and privilege of this House. Let the Committee consider of the 2 former, but for the violation of the liberty of this House, let us not do less than our fathers. Was ever the information of a Member committed to a Committee? Let us send for the parties. Is there here a bare denial of the restitution of the goods? was it not also said, that if all the Parliament were contained in him they would do as they did? Let them be sent for. It was ordered that the Officers of the Custome-house should be sent for.

Mr. *Selden*,

**R**eported from the Committee concerning the printing of the Petition of Right, that there were printed 1500 without any addition at all, which were published in the time of the last Parliament: but since the Parliament other Copies have been printed, and



these supprest and made waste paper, which the Printer did, as he said, by command from Mr. *Attorney*, which he received from his Majesty: and the Printer further said, that the *Attorney* was with the Lord Privy Seal at *White-Hall*, and there delivered unto the Printer sundry papers, with diverse hands to them, and on the backside was endorsed thus, We will & command you that these copies be printed.

Friday 23.

**H**is Majesty sent the House a Message to this effect, That he willed them to cease from the former debate of Tonnage and Poundage till the next day in the after-noon, and that he would speak with them the next day in the after-noon at *White-Hall* in the Banqueting-house.

Saturday 24.

**T**he King made a Speech to that purpose.

Munday 26.

**M**r. *Walter* did inform the House that diverse ships were laden with corn for *Spain*; whereupon a Committee was appointed to inquire of the trading into *Spain*, and to other enemies, transporting corn, and other Munition thither: it is also ordered that some of the prime Council should presently move the King about stay of the ships.

**M**r. Secretay *Cook* then moved that the Bill of Tonnage and Poundage might be read, and after some debate, it was diverted, and they fell upon points of Religion, the which Mr. *Rowse* did first mention.

*See his former Speech at large.*

Sir Francis Beamor,

**I**f Religion be not a Rule to all our actions, what pollicy can we have? If God fight not our battailes the help of man is in vain? In our defect, the cause thereof is our defect in religion, and the sin is Idolatry and Popery, Papists encrease now more than ever they did: neither do they want their Priests and Masses, nay his Majesties name is used to stop proceedings against Papists, and that since the Parliament, contrary to his Majesties goodness, and publick profession, and contrary to his many proclamations, and many instructions to the Judges; and whatsoever is done in the country is undone above.

Mr. *Kirton*,

**I**f ever, now it is time to speak, We see what men are raised to preferment; if we look not to it I shall more fear it than the *Spanish Armado*, or the loss of the *Sound*. *Mountague* was here questioned

oned: We see the *King* to all our comforts is right, it comes not from him, but some that are too near him, are too busie in this. The ambition of the Clergy brought these stories: We see pulpits are full of them, we see some that wear white and black 'tis more than *Mountague*; let us bend our wits to reforme them.

Mr. *Sherland*.

**W**E have a Religion that is worth the loving with all our hearts: it was settled by the bloud of Martyrs, and kept by miracles. To have our noses wiped of this would grieve any heart; more, to see our Religion go away, and designs made of it, and Arminianism still to encrease, as it doth. If do admi, I do perswade my self the greater part of the Clergy, Nobility, and Gentry, are firm, but it is the desire of some to labour to bring in a new faction of their own, and so to drop into the ears of his Majesty, that those that oppose them oppose his Majesty, and so they put him upon designs that stand not with publick liberty, that he commands what he lists, with Lives, Goods, and Religion, and doth as he pleaseth; and so they involve all true hearted *English-men* and Christians under the name of Puritans, and so make their quarrel to be his Majesties, which is treason of the highest quality.

*Tuesday 27.*

**A** Petition was exhibited concerning one *Lewis*, that said about the 25 of *December*, *The Devill take the Parliament*, which was avowed by 2 witnesses. It was resolved to be an offence to the Parliament, and it was ordered he should be sent for.

**S**ir *Nathaniel Rich* tendered a Petition touching the Fast, which was agreed to be preferred to the *King*. It was ordered that a conference should be desired with the Lords about this Petition, who were desired to joyn with the lower House: which was done accordingly.

**T**he *King* sent a Message by Secretary *Cooke* to this effect, *viz.* That his Majesty understanding that the Remonstrance was called for, to take away all question, commanded me to deliver it to you: but hopeth that you proceed with the Bill of Tonnage and Poundage, and give precedence to that business, and to give an end to further dispute between some of his Subjects, or else he shall think his Speech that was with a good applause accepted, had not that good effect which he expected. But before his Messenge there was a report made by Mr. *Pym* for a Committee for Religion, where a motion was made about the Remonstrance the last Session, concerning that part which toucheth Religion: and the Clark answered, that by command from the *King* he delivered it to the Lord Privy Seal; and so the Committee proceeded no farther.

Sir



**S**ir *Walter Earl* replied to the Message : The last part of the Message calls me up. For point of precedency, Religion challengeth the precedence, and the right of our best endeavors. *Ubi dolor ibi digitus*. I know justice and liberty is Gods cause, but what will justice and liberty do when Popery and Arminianisme joyn hand in hand together to bring in a *Spanish* Tyranny, under which those Laws and liberties must cease? What hath been done for Religion since the last Session? We know what declarations have been made, what persons have been advanced, what truthe confirmed by all Authority of Church, Councils, and *King*. For my part, I will forgo my life and estate and liberty, rather than my Religion. And I dare boldly affirm, that never was more corruption between Religion and matters of state, than is at this present time. *Humana consilia castigantur ubi celestibus se preferunt*. Let us hold our selves to method; and that God that carried us through so many difficulties the last Parliament Session, will not be wanting to us now.

Mr. *Corrington*,

**L**et us not do Gods work negligently : We receive his Majesties Message withall duty; for our proceedings let us so proceed as it may soonest conduce to his Majesties desire. Unity concerns all of us : the unity of this house is sweet, especially in Gods cause; let us cry and cry again for this let us be resolved into a Committee, and presently fall to debate thereof.

**U**Pon Mr. *Pym*s motion. It was ordered that Religion should have the precedency, and that the particulars before named should be taken into consideration by a Committee of the whole House.

*Wednesday 28.*

Secretary **COOKE** delivered another Message from his Majesty.

**H**is Majesty upon occasion of dispute in this House about Tonnage and Poundage, was pleased to make a gracious declaration, wherein he commended unto us the speedy finishing thereof, and to give precedency thereto : and since his Majesty understanding the preferring the Cause of Religion, his Majesty expected rather thanks than a Remonstrance, yet he doth not interrupt you, so you do not intrench upon that which doth not belong unto you; But his Majesty still commanded me to tell you that he expects precedency in Tonnage and Poundage, assuring himself he hath given no occasion to put it back, and so you will not put it off.

To this Mr. *Long* replied,

**I** Cannot see but with much sorrow, how we are still pressed to this point, I hoped those near the Chair would have truly informed his Majesty of our good intentions, but we see how unhappy we are still, some about his Majesty makes him diffident of us.

Sir *Thomas Edmonds*,

**I** am sorry this House hath given occasion, of so many Messages about Tonnage and Poundage, after his Majesty hath given us a full satisfaction. You may perceive his Majesty is sensible of the neglect of his business; we that know this, should not discharge our duties to you, if we should not perswade you to that course, which should procure his Majesties good opinion of you. Your selves are witnesses how industrious his Majesty was to procure you gracious Laws in his Fathers time, and since that what enlargement he hath made of our liberties, and yet still we give him cause to repent him of the good he hath done. Consider how dangerous it is to Alienate his Majesties heart from Parliaments.

Mr. *Corington*,

**W**hen men speak here of neglect of duty to his Majesty, let them know we know no such thing, nor what they mean, & I see not how we do neglect the same, I see it is all our hearts to expedite the Bill of Tonnage and Poundage in due time: our business is still put back by these Messages, and the business in hand is of God and his Majesty: Things are certainly amiss, and every one sees it, and woe be to us if we present them not to his Majesty.

Sir *John Elliot*, His Speech to the same effect.

**I**T was ordered that a Committee should be appointed, to pen an Answer to his Majesties Message, and shew that it is their resolution to give him all expeditions in his service, and that they hold it fit not onely to give him thanks, but further to shew what perill we are in, and that Tonnage is their own gift, and it is to arise from themselves, and that they intend not to enter into any thing that belongs not unto themselves.

*Thursday 29.*

**T**He former part of the day was spent in dilating of the transportation of corn and victuals into *Spain*: and it was ordered that Message should be sent to his Majesty, that it is now evident that diverse ships are bound for *Spain*; and to desire a stay of them. After the House sat at a Committee about Religion, after long debate it was resolved by the Commons-House as before.



*Friday 30.*

**T**He House received an answer from his Majesty touching the Ships, which was, that he would consider of it, and send them an answer in due time.

Also this day a Committee of the Lower-House went to the *King* in the Privy-Chamber with the Petition for the Fast; and the Archbishop of *York*, after he had made a short Speech, presented it to his Majesty in the name of both Houses. To which the *King* answered.

*Munday Febr. 2.*

**T**He Lower-House presented a declaration to his Majesty in answer to two Messages sent by him.

*Tuesday 3.*

**S**ecretary *Cook* reported, that himself and the rest of the Committees attended his Majesty upon *Munday*: and he said, For my part I have used all diligence to do all the commands of my Master and this House, and I find that some exceptions have been taken at some words by me used, when I delivered the Bill of Tonnage and Poundage, Indeed I used many Arguments in speaking of his Majesty, I said it much concerned him, and that his Majesty much desired it, and I required it in his name; which I did not intend but to avoid dispute: and I said not this was an ordinary revenue, but this Tonnage was the means to enable his Majesty to set his Fleet to sea.

After this Apology, he read his Majesties answer to the Petition of the Lower-House.

*Sir John Elliot,*

**M**r. Speaker, I confess this hath given great satisfaction for present desires and future hopes; and howsoever I find the misinterpretation of some, and the danger of Religion; yet I find his Majesties ears open, and if these things be thus as we see, that then he is not rightly counselled. I am confident we shall render his Majesty an account of what he expecteth: but Sir, I apprehend a difference between his Majesties expression, and the expression of his Ministers.

First Sir, that Bill was here tendered in his Majesties name, and now we find his Majesty disavows it, that he did it not. What wrong is this done to his Majesty and to this House, to press things in his Sovereigns name, to the prejudice and distraction of us all? I think him not worthy to sit in this House.

Mr.

Mr. *Speaker*,

**T**His Honorable person did explain himself, that he did not press it in his Majesties name, but onely did commend it to your considerations.

Secretary *Cook*,

**I** Said, that in regard of the difference between his Majestie and his Subjects, my desire was to accommodate it.

Sir *Humfrey May*,

**I**F ye be too quick to except against the ministers of his Majestie, that serve his Majestie and this House, it will discourage and stop our mouthes whose service ye dayly commend.

### At the Committee for Religion.

Sir. *John Elliot*,

**F**Or the way of our proceedings, to shew the weight and unitie thereof to all the world, we have laid a good foundation. I collect out of the particulars about the Article of *Lambeth*, that the difference was in the manner of the use of them, but all did profess the truth and worth of them: at which unitie in all our hearts we may all rejoyce; whereas the enemy abroad gives out, that we are at faction amongst our selves, whereas all of us took them granted, not onely to make use of them to oppose our adversaries, but also for the worth of them. Let us boldly relie on the ground alreadie laid, let us look to them that offended us in this our truth, which I hope we shall live and die in, if there be cause. Are there *Arminians*? (for so they are called) look to this, see what degree they creep, let us observe their Books and Sermons, let us strike at them, and make our charge at them, and vindicate our truth that seems yet obscure: and if any justify themselves in their new opinions, let us deal with them, and then testimonie will be needfull, our truth is clear, our proofs will be many, and if these parties will dare to defend themselves, then seek for proof.

The Remonstrance of the last Parliament was read in part about *Arminians*, and also his Majesties Declaration printed with the book of Articles, and the Proclamation against *Mountague*.

Wednesday Febr. 4.

**A** Bill preferred that no Clergie-man shall be in Commission for Peace, except Bishops, Deans, Vice-Chancellors of both Universities, &c. within their severall jurisdictions.

Doctor *Reeves*, which sat as Judge upon the Conservation of Mr. *Mountague*, called in and examined, saith, That Objections were offered



ed *Ore tenus*, and after offered in writing, but he rejected the same, because they had not an advocates hand; and upon the whole faith, he durst neither admit of any objections for the present, nor give time for the same, upon pain of premunire by the Statute.

Doctor *Talbot* and Doctor *Steward* are assigned for Council with Mr. *Jones* the Printer in his Cause.

Mr. *Selden*,

**T**He point considerable is not whether Doctor *Reeves* hath done well or ill, for he did but as any discreet man would have done, but the point is now whether Mr. *Mountague* be a lawfull Bishop or no. Neither is the question to be debated, whether the exceptions be lawfull or no, but being legal, of what force they be to hinder the confirmation of the Bishop. All which is agreed, and Doctor *Reeves* for the present discharged.

A Petition is preferred by *Thomas Ogle* against Doctor *Cosens*, with Articles annexed thereunto, tending to the introducing of Popish Doctrine and Popish Ceremonies into the Cathedral Church at *Durham*.

Sir *Euball Thelwall*,

**T**Here were two affidavits that *Cosens* should say, That the King had no more to do with Religion than his Horse-keeper; and that by the appointment of Mr. Attorney these affidavits were taken, and he said, to the end a Bill in Star-chamber might be filed against him. But since *Cosens* hath his pardon; and the King was told it was onely raised by the spleen of some Puritane.

Mr. *Shervile*,

**D**esired that search might be made for the pardons; There were four pardons under the Great Seal granted to *Mountague*, *Sibthorpe*, *Cosens* and *Manwering*: it pardons all Treasons, Premunires, Errors, erroneous Opinions, and all false Doctrines, scandalous Speeches or Books, and all offences by word and deed, all corrupt contracts, &c. Treason to the person of the King, and Witchcraft onely excepted.

Mr. *Rouffe*,

**H**ere are four persons that have made the Common-wealth sick; thus by the Phisick you see the Diseases: but I conceive there is other physick to be ministered to those rotten Members, for questionless this is not to be cured but by cutting off those Members.

Mr. *Kirton*,

**M**After *Kirton* moved, that the procurers of these Pardons might be enquired after, that it might be seen, who gave order  
to

to the Signet for the going forth of those Pardons; for questionless there are *Cosens* at Court too.

Sir *Robert Philips*,

**I**F ever any was abused, it was our King in granting those pardons: we would save the time of doing any thing, if this be not searched to the bottom. The goodness of our King is much abused. I desire the Attorney may give account by what Warrant he drew these pardons, so shall we find out those that misled the King to the heart-grief of us all. It is high time to find out all these things.

A Committee was hereupon named, to enquire who have been the Solicitors and Procurers of these pardons.

Sir *Edward Giles*,

**I** Know not what prevention may happen in these, for questionless the devil of hell hath his hand in it: Therefore presently let us send for Mr. Attorney. Which was Ordered.

Sir *James Perotte*,

**S**ir *James Perotte* complaineth further of some instruments of the Bishop of *London*, and Doctor *Turner*, who denied the License of printing the Articles of *Ireland*: That diverse books have been licensed by the Bishop of *Londons* Chapplains, and then refuse the same, declaring they are of a contrary opinion, and have given license to Mr. *Chomley* and Mr. *Butterfield*, and therefore would not give license to these.

Mr. *Pym*,

**M**After *Pym* doth make a full Report of all the proceedings against Mr. *Mountague*, since the last Parliament of King *James*.

Sir *Robert Phillips*,

**R**eported from Mr. Attorney, that my Lord of *Dorset* spoke to him to hasten the Pardons, and that he received a Warrant from the King for drawing them; that my Lord *Carleton* brought another Warrant from the King for drawing these pardons, telling him, that he must make expedition therein, and he must draw the same as the Council of the parties did direct the same. That Mr. Attorney having made a rough Draught, being often urged to expedition by the Bishop of *Winchester*, he sent the same to the Bishop, who inter-lined and corrected the same, adding the names of *Cosens*, *Manwering*, and *Sibshorp* to the pardon.

That Mr. Attorney may be asked whether any of these Lords were made acquainted with the affidavit about *Cosens*. A Messenger is sent to the Lord Keeper, to know the reason wherefore he made stop of the Great Seal, and by what solicitations he was prest thereunto.



*Thursday 5.*

A Petition in complaint of an imposition upon Mault, by the Citi-  
of *London*, was this day preferred to the House, which is prefer-  
ed to the Committee for Grievances. Some differences being obser-  
ved in the Articles, as in the twentieth Article, &c. a Committee is  
to Compare the old and new Articles with the Records at *Lambeth*,  
and consider how all those differences come in.

Mr. *Long*,

Complaineth, that a Prosecution hath been against him in the  
Star-chamber for sitting in this House the last Session, he being  
High Sheriff of *Wiltshire*, and chosen Burgeſs of *Bath* in *Somerſetſhire*.

The Preachers are to be chosen to morrow at the Committee for  
Religion.

Mr. *Ogle*,

IS called, who averreth his Petition, and will prove the same by  
witnesses. It is Ordered, that *Cofens* shall have intimation to at-  
tend to answer here, if he will on Munday come fortnight, to be sent  
for by a Serjeant at Arms, and if he be not of the Convocation; but if  
he be, then to have notice by the Speakers letters, and if thereupon  
he appear not, then to proceed with him as is usuall in like Cases.

If Witnesses be sent for to this House in any Publick business, they  
are to pay their own Charges.

Secretarie *Cook*,

SAith, He hath very now received from a Noble person this Mes-  
ſage from his Majestie, That he hath appointed the eighteenth  
of this Moneth for the Fast for this place, and the twentieth of the  
next Moneth for the whole king dom.

Sir *Robert Phillips*,

MOVeth in the behalf of the Lord *Peircie*, that having a Cause  
in dispute in the Lords House, and three Members of this  
House being of his Counsel, desires they may have leave to plead his  
Cause: Which being conceived to be a Cause that is not to receive  
any Judgement here, it is granted.

*Friday.*

A Petition exhibited against one *Wittington* a Papist in *Northum-  
berland*, Ordered to be sent for by a Serjeant at Arms.

Mr. *Harris* of *St. Margarets Westminster*, Mr. *Harris* of *Hanwell* in  
*Oxfordshire*, Mr. *William Fitz-Jefferies* of *Cornwall*, are chosen for  
three Preachers for the day of the Fast, and for the precedence is re-  
ferred to the Preachers themselves.

Master

Mr. *Sherwill*

**R**Eported, one Parson *Scall* procured the Pardon for *Mountague*; one *Bartholomew Baldwin* solicited the Pardon for *Manwering*.

There is also another Pardon found to be granted to *Manwering*, pardoning the Judgement late he had given by the High Court of Parliament, and all sums due to the King thereby.

Sir *Nathaniel Ritch*,

**T**Hat we may do somewhat which may give content to those who sent us hither, and make expedition to the business of his Majesty and the Common-wealth. That therefore the business of Mr. *Mountague* may be expedited to the Lords, that they may enter into these things as well as we.

The Councel of Mr. *Jones* the Printer are to be heard upon Monday next.

Sir *O. Roberts*

**R**Eporteth from the Committee sent to Mr. Attorney, that Mr. Attorney staid for the Affidavits taken by Sir *Euball Thelwall*. That one *Heath* a Gentleman of *Grays-Inne*, told Mr. Attorney, that *Cosens* should say, that the King was not supream of the Church, and that he had no more to do with Religion, than he that rubs his horse heels.

Mr. Attorney acquainted the King; whereupon the King charged him to make a strict Inquisition herein: but the King would not believe the same to be true. Mr. Attorney sent for his Kinsman again, and being examined, he said so as affidavits were made thereon.

There was further certificate from the Dean and others at *Durham*, so that the business was much lessened thereby: but Mr. Attorney pressing the business further, casually met with the Bishop of *Winchester*, who said to Mr. Attorney, that this business will come to nothing, and *King*, that made the affidavit was but a vain fellow.

The Affidavit of *Thomas King* was read, which verifieth the same.

Mr. *Selden* made the rest of this Report, and delivered the Warrant by which Mr. Attorney drew the Pardons for the Bishop of *Winchester*. The effect was, that what Mr. *Mauntague* had done or writ, was not out of any ill meaning; such a Pardon should be drawn as Mr. *Mountagues* Councel should direct. This Warrant was under the Lord *Dorchester*, being the Lord *Carleton*.

Mr. *Selden* delivereth likewise the Copie of the Pardon interlined, and razed by the Lord Bishop of *Winchester*.

Sir *John Elliot*.

**H**ere is high Treason upon oath, a Deposition upon oath, an opposition is not in Law to be admitted; for here is not onely an Admission



Admission, but an Invitation of Certificates for defence, and allowed to sway the case of so high a nature; that therefore the parties that made the Affidavits, and Mr. Attorney may be examined, to make a better disquisition in this, for I fear the intimation of the Bishop of *Winchester* swayed too far with Mr. Attorney. Be matter true or false, the neglect of the dutie of the Attorney is not to be excused. I am much grieved to see his Majesties mercie run so readily to these kind of persons, and his justice so readily upon others, trifling occasions, nay upon no occasions, nay upon no occasion, onely the misinformation of some Minister. Mr. Attorney being by Writ to attend the Lords House, cannot be injoynd to attend this House, or to appear upon Warrant: wherefore Mr. *Littleton* and Mr. *Selden*, being of the same Inne of Court, have undertaken to give notice to Mr. Attorney, that there being an accusation here against him, he may here answer and satisfie the House on Munday next.

*Saturday.*

**A** Bill against Spirituall Symonie, and a Bill against buying or selling of places of Judicature.

Mr. *Kirton* moved, That a time may be appointed to take into consideration the business of Tonnage and Poundage.

Sir *Walter Earl* secondeth his motion, that all the world may know, that we will give to God that which is Gods, and to *Cesar* that which is *Cesars*, and to our Countrey that which is theirs.

Sir *Walter* moveth, That the Merchants may have their goods, and that his Majestie may be moved therein.

It is Ordered, That the House on Tuesday next, in a Committee, shall take into consideration the business of Tonnage, Poundage, and all things incident thereto.

Mr. *Shervill* is nominated to take the Chair of the Committee.

Sir *Rober Phillips*

**R**eported from the Committee for Course of Justice: A Petition of Complaints was exhibited by Mr. *Noell*, a Member of this House, against Sir *Ed. Moseley* Attorney of the Dutchie Court, and his man, in point of injustice, That *Moseley* covenanteth, that his man *Brograve* should have 80 pounds, and then he should have an Injunction, but the Chancellor having Intimation thereof prevented the same, yet after by Covenant, *Moseley* procured his man 50 pounds; That this was an ordinarie course, cited many particulars, that *Moseley* would in his private Chamber adde to Orders, or detract from them, or that was for the King, or against the King, as men would come off to him.

This is referred to a Committee to be examined.

Master

Mr. *Selden*,

**R**Eported from the examination of *Allen*, for so much as concerneth the Priviledge of this House, by the first and third Article against him.

This justified by a Letter written by *Allen*, to Mr. *Barton*; the Puritan faction denied supply like Water-men provoked to War, rowed another way: for his Author of this, he produceth a book set forth by King *James*, in the 19 year of his Reign, pag. 13. to shew how the Puritan faction be clear, by mentioning the particular Members of the Commons House, and pag. 5. & in the same pag. all which they cloke with Religion: and when he had boldly insisted on these, he said, I pray note it; It is not this Parliament I speak of, it was another.

Sir *Robert Phillips*,

**T**Hat he may be sent to the Tower, and that he may stand in some publick place, with a Paper declaring the cause, or such other punishment as the House shall think fit.

Mr. *Pym*,

**T**Hat other matter of greater importance being under examination, he may for the present rest in custodie, and I doubt not but there is matter sufficient to inflict further punishment.

Ordered that *Allen* shall first answer his contempt at the Committee for Religion, on Munday next.

Mr. *Shervile*,

**T**Hat the Committee for Pardons is *sine die*, therefore he moveth for another day, whereupon there is order to meet this afternoon.

Mr. *Selden* reported the draught of Mr. *Mountagues* interlined Pardon, concerning the Additions more than an ordinarie Coronation Pardon, except sundrie causes depending in the three Courts in *Westminster-hall*, and the High Commission Court.

For *Manwering*, all offences for time past, and for time to come.

Sir *John Stanhope*

**M**Oveth, That one *Lynne* a Member of this House, and Secretary to the Bishop of *Winchester*, may look on the Pardon, and be injoynd to declare whether he know the hand or no.

Mr. *Lynne* declareth the interlined particulars, to be part his Lords hand, and part his own hand, by his Lords command; yet some of the interlined particulars he knew not the hand.

Sir *Nathaniel Ritch* thanked this Gentleman for dealing clearly with the House, and saith, for his encouragement, he deserveth thanks from the whole House.

Sir *John Elliot* moveth, That a select Committee may extract a

R r

charge



charge against the Bishop of *Winchester*, that we may have judgement against him.

Sir *Daniel Norton*,

**T**Hat a Doctor of Divinitie, in the Bishop of *Winchesters* Diocess, a very grave Divine, Doctor *Moor*, the Bishop of *Winchester* said to him, he had heard him often preach against Poperie before the Kings Majestie, which was very pleasing to the King; but now he must not. The Doctor answers, he must if it comes in his way: said the Bishop, you must not; and further, your Tables in the Quier stand as in an ale-house. The Doctor replied, they stood according to Law: sayes the Bishop, there be Articles to the controove: said the Doctor, the Register found it contrary, saying, Your Tables at *Winchester* stood as Altars.

Sir *Robert Phillips*,

**T**Hus you see how truth in the discoverie doth grow upon us. And now you see how the introducing Ceremonies at *Durham* doth arise; and now you see the greatest aspersion laid on his Majestie that ever I heard of; and now I am confident the Bishop of *Durham* procured the Kings hand to the Pardons.

Chancellor of the Dutchie,

**T**His trencheth high to the person of the King, and I am glad to hear it, and shall be more glad to see it proved.

Sir *Thomas Heale* :

**S**Aith, he heard these words from Doctor *Moore*s own mouth: And asking if he would prove this in Parliament, he said, he would maintain it with his life.

Mr. *Valentine*

**S**Aith, That this Bishop hath a Chaplain in *Grantham*, that preached they were all damned that refused the Loan, and that he hath made a great combustion in placing the Communion Table there.

The Speakers Letter is to go for Doctor *Moore*.

*Munday 9.*

**A** Petition in complaint of the Post-Masters Patent of *London*, which is referred to a Committee.

Mr. Speaker delivered from Mr. Attorney, a Warrant in writing, of his proceedings in *Cofens* business.

Mr. *John Elliot* reported from the Committee for examination of the Merchants business, that the Committee finding Sheriff *Acton* in prevarications, and contradictions in his examinations, which is conceived

ceived to be a contempt of this House, desires he may be sent for to answer his contempt.

Mr. *Godwin* saith, the Sheriff acknowledgeth his error, and humbly desireth so much favour, that he may once again be called before the Committee, and if then he give not full contentment by his answer, he will refer himself to the wisdom and justice of the House.

Mr. *Walter* secondeth this Motion, so did Alderman *Molson*, Secretary *Cook*, Chancellor of the Dutchie, &c. but his abuse being declared to be so great and so gross, and that he had so many times given him to recollect himself, and that he being so great an Officer of so great a Citie, had had all the favour that might be, and yet rejected the same, and carried himself in a very scornfull manner; wherefore it is Ordered, that he shall be sent for to the House as a Delinquent to Morrow morning.

*Jones* the Printer and his Council are called in to argue the business of Mr. *Mountagues* Episcopal Confirmation.

First *Quere*, Whether the exceptions be Legal.

Secondly, whether the Confirmation be good? The last is the point now in hand, to which the House enjoined the Council to speak.

The Council proposed a Third *Quere*; What will be the fruit or effect of it, if in Law the Confirmation prove void? In this the Council said, it will not extend to make him a Bishop upon the point of Election, but upon the point of Confirmation onely, which maketh him punishable if he execute any thing concerning the Bishoprick.

Sir *Hen. Martin* saith, The exception making void the Confirmation, doth in Law work also upon the Election.

Doctor *Steward* saith, The point of setting to of the Advocates hand, is but matter of Form in the Court, no matter of Law.

Sir *Henry Martin* saith, he will endeavour himself to give the House as full satisfaction, and he will speak without relation to the Kings Right and Laws of the Realm.

The Proclamation by the Common Law should not be at *Bow Church*, but at the Cathedral Church of the Diocese where the Bishop is to be elected, and the Dean and Charter of that Diocese is to except, and not every one that will. The Argument is endless, and to alter a course so long settled, I conceive it is plain, the King and the Law have power to deprive him of his Bishoprick if he deserves the same; I think therefore it were good to decline this dispute for the present, and to proceed to remove him which we are allowed.

*Tuesday 10.*

A Bill for Ordering the Government and Plantation of the Summer Islands.

A Bill to restrain some abuses in Ministers and Magistrates.

Mr. *Rowles* complaineth, that since his last complaint of the



breach of the liberties of this House, his Ware-house hath been locked up by one *Masse* a Pursevant, and that yesterday he was called forth from the Committee in the Exchequer-chamber, and served with a *Subpena* to appear in Star-chamber; but that since he received a Letter from Mr. Attorney, that it was a mistake. The *Subpena* was read, but the Letter not suffered to be read.

Sir *Robert Phillips*,

**Y**OU see we are made the Subject of scorn and contempt. I conceive this to be a bone thrown by those that have drawn a cloud over our sun, our Religion, to divert or interrupt us in the prosecution of them. I desire the Messenger may be sent for, and examined by what procurement this *Subpena* was taken forth: for if we find not out those that throw these scorns upon us, it is in vain to sit here.

Mr. *Chancellor* of the Dutchie,

**T**HIS proceeds from some great error; for I will assure you, this never proceeded from King nor Council. I therefore desire it may be searched to the bottom, for be confident, neither King nor Council have cast in this as a bone.

Mr. *Selden*,

**T**HIS is not to be reckoned an Error, for questionless this is to affront us, and our own Liberties is the cause of this.

It is Ordered, that *Shemington* the Messenger that served the *Subpena* be presently sent for to the House.

A Committee of six are appointed to see the information in Star-chamber, and to examin the same, and by whom the same was put in: and they have power to send for persons, or records that may inform them.

A general Order agreed on, That all the Committees that have power to send for parties, shall have power to command any of them as they shall think fit, to attend the House at such times as they shall think fit.

The priviledge of the Merchants that are Planters here, may be taken into consideration by this Committee, concerning the information in Star-chamber.

Sheriff *Acton* called into the Barre as a Delinquent, upon his knees saith, if he have erred, it is through want of memorie and ignorance; for he intended not the least dislike, or distaste to any Member of the House.

Mr. *Long* moved he might be sent to the Tower.

Sir *Francis Seymour*,

**T**HAT he may now be referred back to the Committee to be re-examined, if then he deal not clearly, this House may proceed to further punishment.

Mr.

Mr. *Selden*,

I Cannot remember when we did commit a Sheriff of *London*, but I remember when the House did commit both the Sheriffs of *London* to the Tower, for an abuse of less nature, onely for countenancing of a Serjeant in an Arrest on a Member of Parliament, though they did acknowledge their faults at the Barre, which this man hath not yet done; the Serjeant was sent to Little-cage, the person, at whose suit he was Arrested, was committed to the *Fleet*, and both the Sheriffs to the Tower.

Mr. *Kirton*,

I Came into this House with as good an heart to this man as any man, for I was spoken to to stand for him as I came in, and I promised to do what favour I could: but if he were my brother he should to the Tower.

Mr. *Littleton*,

YOu see the affronts by books, by preaching, by rumors, by being dayly sued, with Proces, that are put upon us, that we are become but a meer Scare-crow: the neglect of our dutie is the cause of this, it is high time to remedie this, or it is in vain to sit here.

The Sheriff is again called in to the Barre on his knees, and is sentenced to the Tower.

Sir *Ben. Ruddiard*,

THere be diverse Recantations, Submissions, and Sentences remaining on Record, in both Universities against *Arminianisme*, that concerning any thing that may conduce to our end, the Speakers Letter may be sent to the Vicechancellor, for those Records: which is Ordered.

It is Ordered, that *Worsnam Daws* and *Carmarthen*, are to be at the Barre upon Fryday.

Wednesday II.

MAfter *Selden* reported concerning the Proces of the Merchants, the Coppie of the Bill brought in and read, that the Merchants did Plot, Practice, and Combine together against the peace of the Kingdom. This being conceived to be a business incident to Tonnage and Poundage, is Ordered to be referred till to Morrow morning.

Mr. *Selden*,

THat a Report shall be made to morrow of the Examination of the Complaints of the Merchants, and the information in the Exchequer may also be brought; which was also Ordered.

Ordered, That in respect the Term ends to Morrow, and the Affizes is to follow, and diverse Members Lawyers may be gone down,



it is Ordered, that none shall be gone without leave of the House.

It is also Ordered, That the Speakers Letter be sent for Sir *Edward Cook*.

### At the Committee for Religion.

**M**After *Walter* delivered a Petition of the Book-sellers and Printers, in complaint of the restraint of books written against Poperie and Arminianisme, and the contrarie allowed of, by the onely means of the Bishop of *London*; & that diverse of them have been so Pursevented for printing of Orthodox books, & that the licensing of books, is now onely restrained to the Bishop of *London* and his Chaplains.

One of the Printers said he tendred diverse books, one called, *The golden Spur to the heavenly Race*. That *Turner*, one of the Bishop of *Londons* Chaplains said, That if he would put out the point, That a man may be certain of his Salvation, he would license the same: notwithstanding he put out that point, yet he could not get the same licensed.

*Mr. Selden*, The refusing the Licensing of books is no crime, but the Licensing of bad books is a crime, or the refusing to license books, because then writ against Poperie or Arminianisme is a crime. There is no Law to prevent the printing of any book in *England*, onely a Decree in Star-chamber: therefore that a man should be sued and imprisoned, and his goods taken from him, is a great Invasion on the Libertie of the Subject: moveth a Law to be made upon this.

This is referred to a select Committee to examin.

*Mr. Shervile*,

**R**Eported concerning the Pardons, that they have examined Doctor *Sibthorp* and *Cofens* Pardons. *Sibthorp* solicited his own Pardon, and said, he would get the Bishop of *Winchester* to get the Kings hand to it.

It is evident, that the Bishop of *Winchester* got the Kings hand to *Sibthorp* and *Cofens* Pardons, and also *Mountagues* Pardon was promised by him.

That Doctor *Manwering* solicited his own Pardon, and the Bishop of *Winchester* got the Kings hand to it.

It is likewise said, the Pardons were all drawn by Mr. Attorney before there was any Warrant.

*Mr. Cromwell* saith, he had by relation from one Doctor *Beard*, that *Beard* said, Doctor *Allabaster* had preached flat Poperie at *Pauls Cross*; the Bishop of *Winchester* commanded him, as he was his Diocesan, that he should preach nothing to the contrarie.

Sir *Robert Phillips* saith, One Doctor *Marshall* will relate as much said to him by the Bishop of *Winchester*, as the Bishop said to Doctor *Moor*.

Mr.

Mr. *Kirton*, That Doctor *Marshall* and Doctor *Beard* may be sent for. This Bishop, though he hath leapt through many Bishopricks, yet he hath left Poperie behind him.

That *Cosens* frequenting the Printing-house, hath caused the Book of Common-Prayer to be new printed, and hath changed the word Minister into Priest, and hath put out in another place the word Elect: thus *Cosens* and his Lord go hand in hand.

Sir *Miles Fleetwood* saith, We are to give *Mountague* his Charge, and by his books, charge him with Schisme in error of Doctrine, Faction in point of State, Thirdly matter of Aggravation.

Sir *Walter Earl*,

**Q***ui color albus erat, nunc est contrarius albo.* saith, Doctor *White* hath sold his Orthodox books, and bought Jesuiticall books; & moves that Bishop *White*, may go arm in arm with *Mountague*. Ordered a select Committee to be named, to digest these things that have been already agitated, concerning the Innovation of Religion, the Cause of the Innovation, and the Remedie.

Thursday 12.

**T**He Sheriff of *London*, upon his submission at the Barre, is released his imprisonment in the Tower.

Sir *John Elliot* made the Report for the Committee, in the examination of the complaint of Merchants, and delivered the Orders and Injunctions into the Exchequer.

## At a great Committee for Tonnage and Poundage, Mr. SHERVIL in the Chair,

**M**After *Waller* delivered a Petition from *Chambers*, *Felke*, and *Gilborn*, in complaint of an information against them in the Star-chamber, about Tonnage and Poundage, & that by the restraint of their goods they are like to be undone.

Sir *John Elliot*,

**T**He Merchants are not onely kept from their goods by Customers, but by a pretended Justice in a Court of Justice, as the Exchequer. I conceive, if the Judges of that Court, had their understanding enlightened of their error by this House, they would reform the same, and thereby the Merchants suddenly come to their goods.

Mr. *Transfort* conceiveth this to be a difficult way for us to go.

Mr. *Corington*, Let it be done which way the House shall think fit, but I conceive the Merchants shall have their goods before we can think of the Bill. Kings ought not by the Law of God thus to oppress



oppress their Subjects. I know we have a good King, and this is the advice of his wicked Ministers : but there is nothing can be more dishonorable unto him.

Mr. *Stroud*, That it may be Voted , That the Merchants may have their goods before we enter on the Bill.

*Chancellor of the Dutchie*, I shall speak my opinion, because I know not whether I shall have libertie to speak , or you to hear any more. All the proceedings of the King and his Ministers, was to keep the Question safe untill this House should meet; and you shall find the proceedings of the Chequer were Legal; and thus much, not knowing whether I shall have a days libertie to speak any more here again.

Mr. *Thesaurer*, There is none here but would think it a hard thing, that a Possession should be taken from us without any order for Sequestration, that therefore it was not to be suffered, that these few men should so unjustly disturb the Government of the State. Desires there may be no interruption, but that we may proceed to settle the Tonnage.

Mr. *Corington*, I hope we may speak here, as I hope we may speak in heaven, and do our duties, and let no fear divert us.

Mr. *Waller*, It is not so few as 500 Merchants are threatened in this.

Sir *Robert Phillips* moveth, we may go to the King , and satisfie him of these interruptions.

Mr. *Noy*, We cannot safely give , unless we be in possession, and proceedings in the Exchequer nullified, and information in the Star-chamber, and the Annexion to the Petition of Right, and other Records. I will not give my voice to this , untill these things be made void; for it will not be a Guift, but a Confirmation. Neither will I give, unless these interruptions be removed, and a Declaration in the Bill, That the King hath no Right, but by our free guift.

If it will not be accepted as is fit for us to give it , we cannot help it. If it be the Kings alreadie, as by these new Records, then we need not to give it.

Mr. *Selden* secondeth the Motion of sending a Message to the Exchequer, declareth a President of a Message sent into the Chancerie, for stay of proceedings in a Cause, and it was obtained; and whatsoever the Judges return it cannot prejudice us : the Law speaks by Record , and if these Records remain, it will to posteritie explain the Law.

Mr. *Littleton*, For the Right , there is no Lawyer so ignorant to conceive it, nor any Judge in the Land to affirm it is against giving to the King, or going on the Bill. In this case, by the Law, a man cannot be put to a Petition of Right, but shall recover without Right.

Ordered, that a Message shall be sent to the Court of the Exchequer, That whereas certain goods of the Merchants, have been stayed by Injunction from that Court, by a false Affidavit , and that the  
Customers

Customers that made the Affidavit, have upon examination of this House confessed, that the goods were stayed onely for duties contained in the book of Rates, that therefore that Court would make void the orders and Affidavits in this business.

*Friday 13.*

A Petition against one *Burges* a Priest, who was here complained of the last Session; some new Articles complained against him; that he could not get a Copie of his Articles out of the house, untill he was faine to get one counterfeited himself a Puritan to get the same, and other new misdemeanors. He is Ordered to be sent for.

*Sir. John Elliot,*

A Motion for Priviledge of Merchants. Order is, That any man having a Complaint depending here, in the mean time intimation shall be given to my Lord Keeper, That no Attachment shall go forth against the Merchants.

*Chancellor* of the Dutchie reported the Message to the Chequer Court, that the Treasurer and the Barons, will forthwith take the same into consideration, and return answer.

It is Ordered, Mr. Secretarie *Cook* shall take care, that intimation shall be given to the Citie about the Fast.

Doctor *More* called in, saith, he was referred to the Bishop of *Winchester*, to be censured for preaching a Sermon; the Bishop said he had heard him preach, and deliver many prettie passages against the Papists, which pleased King *James*, but he must not do so now.

That you have a brother that preacheth against Bowing at the high Altar, or at the name of *Jesus*; and that the Communion Tables stood as Tables in Ale-houses; but he would have them to be set as High Altars.

Dr. *Moor* is to deliver these things in writing to Morrow morning.

### At the Committee for Religion.

*Sir William Bawstrod*, If we now speak not, we may for ever hold our peace; when besides the Queens Mass, there are two other Masses dayly: so that it is grown ordinarie with the out-facing *Jesuits*, and common in discourse, Will you go to Mass? or, have you been at Mass at *Somerset-house*? there coming 500 at a time from Mass. Desires to know by what authoritie the *Jesuits* lately in *Newgate* were released.

Mr. *Corington*, Doubts not but his Majesties intention was good in the Declaration lately published, but I conceive it will be made use of onely to our disadvantage; that therefore the Declaration made be taken into consideration.



Sir *Richard Cravenor*

**R**Eports the proceedings of this House against Poperie the last Session, and what fruits have been thereon.

Sir *Rober Phillips*, If ever there were a necessitie of dealing plainly and freely, this is the time. There is an Admission of Priests and *Fesuits*, as if it were in *Spain* or *France*: the increase of Papists, is by connivance of persons in Authoritie.

Nine hundred and fourtie persons in houses of Religion, being *English*, *Irish*, and *Scots* in the *Netherlands*, maintained by the Papists of *England*; and of this I shall deliver the particulars, that we may frame a Remonstrance to the King, that unless there be some better performance of his Majesties late answers to so many Petitions, our Religion will be past recoverie.

Mr. *Corington*, That the Papists, by Act of Parliament, or Laws of State, may be removed from their offices, which we have just cause to suspect.

Mr. *Selden* moveth, that these things may be debated in order, and first for releasing the *Fesuits* that were arraigned at *Newgate*, whereof one was condemned; they were 10 in number, which were Priests who had begun a Colledge here in *London*, about *Clarkenwell*: and these men could not attempt these acts of boldness, but they must have great countenancers.

Secretarie *Cook*,

**T**hat a Minister ( who is said to be himself ) having notice of these 10, and this Colledge intended to be kept at *Clarkenwell*.

That it is plain there was a place appointed for this Colledge, and Orders and Relicts prepared.

This Minister made the King acquainted with it, and I should not do my dutie, if I should not declare how much his Majestie was affected with it. His Majestie refers it to the special care of the Lords of the Councell, who examining the same, sent these ten persons to *Newgate*, and gave order to Mr. Attorney, to prosecute the Law against them. That this Colledge was first at *Edmonton*, removed from thence to *Gamerwell*, and thence to *Clerkenwell*.

Ordered, That all the Knights and Burgeses of the House, shall, to Morrow morning declare their knowledge, what Letters or other hinderances have been for the staying of proceedings against Recusants.

Mr. *Long*, a Justice of Peace, who is said to understand much in the business of the Colledge of *Fesuits* at *Clarkenwell*, is sent for and examined; saith, by the appointment of Mr. Secretarie *Cook*, he apprehended these persons, and took their Examinations; and saith further, he heard they were delivered out of *Newgate* by order from Mr. Attorney.

That Mr. *Middlemore*, or General Soliciter for the Papists, hired this

this house for the Lord of *Shrewsburie*, a Papist, and that there are diverse books of account, of payments and disbursements, to the value of 300 pounds *per Annum*, with diverse Recusants names, who allowed towards the maintenance of this Colledge; and these books and papers, are in the hand of Mr. Secretary *Cook*.

Secretarie *Cook* saith, he cannot so amply declare the truth of the proceedings herein, untill he have leave from his Majestie.

One *Cross* a Pursevant, is to be examined upon oath: who declareth, he could discover diverse stoppages of the execution of the Laws against Recusants.

*Saturday 14.*

**A** Complaint against the Lord *Lambert*, a Baron of *Ireland*, and a Member of this House; who being a Colonel of Souldiers in *Midd.* hath imposed Four pence upon every Souldier towards his Officers Charges, and the Petitioner, for refusing to pay, was first set in the Stocks, and after, by the Lord *Lambert*, committed to a Publick prison.

It is Ordered, that the Lord *Lambert* shall be sent for to answer this.

Sir *John Epsley* desireth leave to answer a Complaint that is in the Lords house of Parliament against him.

Mr. *Selden*, That the use was, and citeth Presidents, that no Commander could be called to the Lords House, but it will trench much to the disadvantage of the Priviledge of this House; and untill 18. *Jac.* there was never President to the contrarie. That therefore this may be considered of by a select Committee.

Ordered, that Sir *John Epsley* shall not have leave.

Mr. *Chancellor* of the Dutchie, stily secondeth Mr. *Seldens* Motion.

Mr. Secretary *Cook*, I am as carefull to maintain a good correspondence with the Lords, as any man; but connivances in this kind may overthrow the fundamental Rights and Liberties of this House. Let it therefore seriously be considered of; for this not onely concerneth the Right of this House, but the Libertie of the Common-wealth.

Ordered, a select Committee shall be appointed to consider this.

Mr. *Chancellor* of the Dutchie, delivereth an answer in writing from the Lord *Chancellor*, Trer. and Barons, to the Message sent to them.

Mr. *Kirton*,

**W**E looked for Satisfaction, but now you see a Justification of their actions. I therefore desire now, we may proceed to consider of their proceedings, and whether ever the Court of Exchequer held this course before, for staying of Replevies; and whether these have been done by the Regal Prerogative of the King, in his Court of Exchequer.

It is Ordered, that a select Committee of Lawyers, Chequer-men, shall take this into consideration.



Mr. *Selden*, We have delayed the proceeding with the Customers, expecting some good success from the Chequer, but finding it otherwise, I desire the Customers may be called to the Barre on Munday next. Which is Ordered.

### At the Committee for Religion.

*Sir Thomas Hobbie*, from the Committee reported for the examination of the Keeper and Clerk of *Newgate*, concerning the Priests, there being a Warrant under the Attorneys hand for the deliverie of the Persons; a Warrant under the Lord Chief Justices hand, according to a Letter which he received from the Lord of *Dorset*, signifying, that it was his Majesties pleasure, that the Priest condemned should be reprived.

Another Warrant under the Attorneys hand, that the Priests condemned should be reprived; and also in the Kings name to release those other nine persons.

*Sir Nathaniel Ritch*, I am confident, the Grace of the King hath been abused in this; that therefore the privie Counsellors of this House, may know whether it were his Majesties direction.

It is moved, that Mr. Secretarie *Cook*, may first declare his knowledge in this.

One *Crofs*, gave intimation of these persons.

First the Secretarie, *Super totam maternam*, It is evident, that the Colledge at *Clarkenwell*, is a Colledge of *Jesuits*, holden under a Foreign Supream power.

*Sir Francis Seymour* taxeth Mr. Attorneys affection and judgement in this, and also declareth continual Letters from Mr. Attorney in stay of proceedings against Recusants. You see in this, how slightly Mr. Attorney hath put over a business of this weight to Mr. *Long*.

*Crofs* the Pursevaint saith, there was an Eleventh man in the New Prison, and the Keeper of that Prison said, he was delivered by Warrant from the Council-board.

*Sir John Elliot*, No man could find a way on which to vent his malice so much to this Church and State, as by protecting these men. That this may be fixed home on that great Lord of *Dorset*, that I fear hath defiled his fingers too far in this business; and on Mr. Attorney, whom I am sorrie I have occasion to nominate so often in this matter of Religion, in stopping of proceedings against Recusants.

Mr. *Recorder* is ordered to be sent for, and to be examined in this, rather than to be sent for, having had the Honor formerly to sit in the Chair.

Secretarie *Cook* saith, we shall find that the King, being mercifull in case of shedding bloud, gave direction for the repriving of those Priests.

*Sir. John Elliot*, I doubt not when we shall declare the depth of  
this

this to his Majestie, but he will render them to judgement that gave him advice herein.

*Sir Nath. Ritch*, These *Jesuits* are bound by Sureties to answer further at the Councel-board. I wish these Bonds would produce these Men, that by examination of them, we may find out the whole pack of their Benefactors and Countenancers.

*Mr. Long* saith, that he offering at Session the Evidence by order from *M. Attorney*, the Lord Chief Justice *Richardson* interrupted him, and told him he must speak to the point in issue, whether Priests or no Priests : and hereupon the Judges consulted amongst themselves.

*Mr. Selden* saith, he was present at the Sessions, and plain Treason was proved, and nothing done in it. The further examination of this is referred to a select Committee.

Munday 16.

A Petition of Complaint against *Sir Henry Martin*, for disposing of the goods of one *Brown* (who died intestate) to his own private use.

*Sir Henry Martin*, If I prove not my self as clear of this as *St. John Baptist*, let me be reckoned to be a Jew.

Referred to the Committee for course of Justice.

### At the Committee for Religion.

After *Stroud*, That the Lord Chief Justice may be called to give an account of his stay of Justice, in the execution of the condemned Priests, which he ought not to have done, though his Majestie signified his pleasure to the contrarie.

*Chancellor* of the Dutchie, That was a thing ordinarie for a Chief Justice to do in Queen *Elisabeths* and King *Jamess* times, as also a Declaration in the Star-chamber, that all condemned Priests should be sent to the Castle of *Wisbitch*; and from hence (though the King had given no order for the replevie) he might have taken his Warrant for his proceedings.

*Mr. Selden* reporteth from the Committee, for the further examination of *Mr. Long*, concerning the proceeding at *Newgate* against the *Jesuits*; whereby plainly appeareth, that the evidence tendered in the Court at *Newgate*, did plainly testifie these men to be Priests, yet the Lord Chief Justice *Richardson* did reject the same, against the sence of the rest of the Judges and Justices present : whereby it is plain he dealt under-hand to some of the *Jesuites*.

Ordered, That two Members shall be sent to each Judge that were present at the Sessions at *Newgate*; who were said to be the Lord Chief Justice of the *Kings Bench*, & the Chief Justice of the *Common-pleas*, Justice *Whitlock*, Justice *Fones*, and Justice *Crook*.



Tuseday 17.

**M** After *Chambers* preferreth another Petition, in complaint of a Warrant newly proceeding from the Councel-board, for the stay of the Merchants goods, unless they payed the duties that were due in King *James* his time.

Sir *John Elliot*, You see, as by the last answer from the Exchequer, the Merchants were bounded within the Court to sue for their own; so they are now debarred from all means of coming by their own.

It is Ordered, that the Customers shall attend the House on Thursday next. In the mean time it is referred to the former Committee.

Ordered, a Committee of six to Collect and take all the names at the Fast, and to meet at eight of the Clock in the Morning.

Ordered, That a Committee shall consider of a speedie way to put the Merchants in Possession of their goods, without which it is warned we sit here in vain.

Sir *Thomas Hobbie*, Reported from my Lord Chief Justice *Hide*, that he doth not remember any Papers tendred by Mr. *Long* were rejected, or that he affirmed they were dangerous persons, and a Colledge of *Jesuits*; but howsoever Mr. *Long* tendred nothing to prove them so, but that he had diverse papers in his hand.

Mr. *Wansford* Reported from the Lord Chief Justice *Richardson*, who saith, that Mr. *Long* did discourse of the place and house, but did not press the reading of any papers, neither doth he know what was in the papers, neither knew he any thing to prove the persons Priests.

Sir *Thomas Barrington* delivereth the answer of Justice *Jones*, who saith, the same papers were offered by Mr. *Long*, but he knoweth not the Contents thereof, nor the reason why they were refused: but he came late for want of his health, and the second day was not there at all.

The like was Reported by Sir *Will. Constable*, from Justice *Crook*.

Sir *Thomas Barrington* saith, Although that Justice *Jones* did not write the name of my Lord Chief Justice *Richardson*, yet in discourse named him to be the man that said, The point in proof is not whether they be Priests or no Priests.

Sir *Nath. Ritch*, Here is a charge of a high nature on the Judges by Mr. *Long*. That Mr. *Long* now may make good his Charge, or suffer for it: for there were witnesses enough in the Court.

Ordered, Mr. *Long* to be here on Thursday Morning.

Ordered, That the Justices about this time, shall be required to deliver in the names of all Recusants remaining about the Town, and their conditions, and what Countrey they be.

It is Moved, That the Gentlemen of the Inns of Court, and of the Chancery, may give in their knowledge what Recusants are there.

Sir

Sir *John Stanhope*, That the Court may give in the names of Recusants there, likewise by what Warrant these be about the Town, and what publick charge of Office any of these persons have, also what Priests and *Jesuites* are in any prison in *London*; for they have libertie sometimes to go five miles to say Mass.

Wednesday 18.

A Publick Fast was kept by this House in *Westminster*, where were three Sermons.

Thursday 19.

MAfter *Daves*, one of the Customers, called in to answer the point of Priviledge in taking Mr. *Rolles* his goods, being a Member of this House, saith, he took Mr. *Rolles* goods by virtue of a Commission under the great Seal, and other warrants remaining in the hands of Sir *John Elliot*. That he knew Mr. *Rolles* to be a Parliament man, and Mr. *Rolles* demanded his Priviledge; but he did understand his Priviledge to extend onely to his person, not to his goods.

Mr. *Daves* further saith, he took those goods for such duties as were due in King *James* his time, and that the King sent for him on Saturday last, and commanded him to make no other answer.

Mr. *Carmarthen*, another Customer called in, saith, he knew Mr. *Rolles* to be a Parliament man, and that he told Mr. *Rolles* he did not find any Parliament man exempted in their Commission, and if all the bodie of this House were in him, he would not deliver the goods (if he said he said he would not, it was because he could not.)

Mr. *Wansforth*, That the delinquence of these men may be declined for the present, and that we may first go to the King by way of Remonstrance, considering the matter from whence this did arise. If it were a single Priviledge, it were easily determined.

Mr. *Selden*, If there be any near the King that misrepresents our actions, let the curse light on them, and not on us. And believe it, it is high time to right our selves, and untill we vindicate our selves in this, it will be in vain to sit here.

Sir *Nathaniel Ritch* moveth, not to proceed in this, untill it be by a select Committee considered, in regard, the King himself gave order to stay these goods, though the goods of a Parliament man.

Sir *John Eliot*, The heart-bloud of the Libertie of the Commonwealth, receiveth its life from the Priviledge of this House.

Resolved by question, that this shall be presently taken into consideration. And being conceived a business of great consequence, It is Ordered, That the House shall be dissolved into a Committee, for the more freedome of debate. Mr. *Harbert* in the Chair of that Committee.

Fryday



Friday 20.

**A** Petition of Complaint of a Conspiracie against a mans life, by the Lord Deputie of *Ireland*, and others, to get the estate of the Petitioner to their own use.

Which is referred to the Committee for Justice.

Sir *John Worsnam*, another of the Customers called in, saith, he was commanded from the King: that the goods were taken for duties; and no more: that he was sought to to Farm the Customs, and told the King, (being sent for to him) that he was not willing to deal therein, untill the Parliament had granted the same.

Mr. *Selden* Conceiveth the case of these three Customers do differ in the degrees of their offences. First for Sir *John Worsnam*, whatever he saith here, he hath often confessed the goods were taken for Tonnage and Poundage: so that as he broke the Priviledge in taking the goods, so likewise his swearing one thing and the contrarie, plainly appeareth upon proof, and his own confession.

Mr. *Dawes*, his cause differeth onely in this, Sir *John Worsnam* is a Patentee, and *Dawes* onely a sharer.

Mr. *Carmarthens* cause differeth, in saying, if all the Parliament were in him, he would not deliver his goods.

Ordered, that *Worsnams* case shall be first decided.

And first the point is, Whether by the Lease Sir *John Worsnam* having seised the goods, hath interest or no; or whether he be onely an accounter to the King, or not.

Mr. *Glanville*, Here is a sum of money advanced, a Lease granted for certain years, a certain Rent reserved: and though there be a covenant to these men, that if there be less it shall be abated, yet that cannot take away their interest.

The substance of the offences made by the Customers in the Exchequer is, that the goods of the Merchants seised by them, and remaining in the Kings Store-house, were seised onely for duties to the King, mentioned in a Commission under the Kings signet; and that themselves (the Customers) had no interest, nor pretence of interest.

Saturday 21.

**A** Petition by Mr. *Thomas Symons*, in further complaint of the Customers, and the Two shillings Six pence upon the Currants granted to the Lord *Arrundell*: which is referred to the Committee for Merchants.

Sir *Robert Pye* saith, The Lord of *Arrundell* hath delivered in his Patent to the King two months since.

### At the Committee for Merchants.

**M** After *Littleton* argued, whether a Member of the House hath his goods priviledged upon a Prorogation, being seised for the King.

All

All Priviledge is allowed for the good of the Common-wealth, and the Parliament Priviledge is above any other, & the Parliament onely can decide Priviledge of Parliament, not any other Judge or Court whatsoever.

That a man may not distrain for *rem* in Parliament time, but for all arrears after the Parliament he may distrain: he is not to be employed in any action personal, nor his goods to be seised in the Exchequer. A Record and Act of Parliament by Petition, that because the servant of a Member of the Parliament is in the Kings Royal protection, that it might be High Treason to kill a Parliament man: and the King answered affirmatively; which made it a Law.

And for the Judges to determin priviledge of Parliament, were to supersede the Law, and make it void. For the Prorogation the Priviledge stands good untill the day of Prorogation, notwithstanding a Proclamation of a new Prorogation.

That the King is never so high in point of State as in the Parliament. Citeth the case of Sir *Robert Howard* in High Commission.

All Priviledges unless in Felonie, Treason, or breach of Peace.

Sir *Robert Phillips*, Thus you see how fast the Prerogative of the King doth trench on the Libertie of the Subject, and how hardly recovered. Citeth many Presidents, wherein the goods of a Member of the Parliament were Priviledged from seizure in the Exchequer. In 19 *Eli*z. it was resolved in Parliament, that 20 days before, and 20 days after was the time of Priviledge.

*Chancellor* of the Dutchie, That in this debate we may tie our selves to point of Law and Authoritie, not to point of Reason.

And conceiveth that no Priviledge lieth against the King in point of his duties.

Sir *Francis Seymour*, I desire it may first be debated, Whether this case doth concern the King or no: for I conceive these Customers have not made good that there was any right: here is onely art used to entitle the King. I conceive it a high offence for any man to lay the scandal upon the King for every project.

Mr. *Glanveil*, Here is a cunning Project in the Exchequer to entitle the King, a meer cunning Project, and an offence of a high nature, to shelter their projects under the Command of the Crown.

Secretarie *Cook*, The point in question is not the right of the Subject, but the right of Parliament Priviledge, and that in the case of Mr. *Rolles*; and this is onely now in question.

Sir *John Strangewaies*, I know no reason why we should draw a question upon our selves which we need not, especially between the King and us. I conceive it plain, these Customers took the goods in their own right, not in the Kings. In this Priviledge is plainly broken, wherein it is easily determined.

Mr. *Banks*, In this case there is no interposing of the Kings Right, and the King, this Parliament hath declared as much.



That the Courts at *Westminster* do grant 12 days priviledge to any man to inform his Councel, much more the Court of Parliament are to have their Priviledge. The Kings Command cannot extend to authorize any man to break the Priviledges, no more than it will warrant an entrie upon any mans Land without proceſs of Law.

Mr. *Soliciter*, If the King have no Right, how can he make a Leaſe: then this pretended intereſt of the Customers muſt needs be void, and therefore the goods muſt not be taken on their own right, but in the right of the King.

Mr. *Selden*, If there were any right, the pretended right were in the Subject. Firſt, whether Priviledge in goods. Secondly, whether the right were in the Customers onely. Thirdly, whether priviledge againſt the King.

1. If the Lords have no priviledge in Parliaments for their goods, then have they no priviledge at all; for they are priviledged in their perſons out of Parliament.

2. For the point of intereſt it is plain, no kind of Covenant can alter the intereſt; and queſtionleſs, had the cauſe in the Exchequer appeared to the Barons as it doth to us, they would never have proceeded as they did.

3. If our goods may be ſeized into the Exchequer, be it right or wrong, we were then as good have nothing.

Sir *Nath. Ritche*, It was recorded the laſt Seſſion (and citeth other preſidents in this Houſe) that a ſervant of a Member in Parliament ought to have priviledge in his goods.

Mr. *Noy* ſaith, that theſe Commiſſioners had neither Commiſſion nor Command to ſeize. Therefore without doubt we may proceed ſafely to the other queſtion, That the priviledge is broken by the Customers, without relation to any Commiſſion or Command of the King.

Secretarie *Cook* ſaith, It is in the Commiſſion to ſeize, but the Commiſſion being read, it is not found to be there.

Chancellor of the *Dutchie* ſaith, Mr. *Daves* mentioned, that he ſeized theſe goods by virtue of a Commiſſion and other Warrants remaining in the hands of Sir *John Elliot*: that therefore theſe Warrants may be ſeen, whether there be no command to ſeize theſe goods.

Sir *Nathaniel Ritche*, This days debate much joyeth me, ſpecially the motion made by Mr. *Noy*, whereby it is plain we have a way open to go to this queſtion, without relation to the Kings Commiſſion or Command: and deſire it, in reſpect there appears nothing before us to incumber the queſtion.

Chancellor of the *Dutchie*, deſires again theſe Warrants may be lookt into before we go to the queſtion.

Mr. *Kirton*, In reſpect this Honorable Gentleman preſſeth this ſo far, that it may appear with what judgement this Houſe hath proceeded.

Mr.

Mr. *Glanveil*, I consent these Warrants be sent for and read, but withall, if any thing arise that may produce any thing of ill consequence, let it be considered from whence it doth come.

The Privie Councillers are contented with this Motion.

The Warrants being sent for and read, it is plain there is no Warrant to seize.

Mr. *Kirton*, If now there be any thing of doubt, I desire those Honorable persons may make their objections.

Chancellor of the *Datchie*, I rejoyce when I can go to the Court able to justifie your proceedings.

I confesse, I see nothing now but that we may safely proceed to the Question.

Mr. Secretarie *Cook* saith as much.

Mr. *Hackwell* argueth against Priviledge in time of Prorogation.

Mr. *Noy* saith, he had no doubt, but that Priviledge was in force in time of Prorogation, untill he heard this Argument of Prorogation of Mr. *Hackwell*, and saith, that he hath nothing from him yet that doth alter his opinion; and citeth a cause wherein the Lords House hath this verie Prorogation adjudged the Priviledge.

Mr. *Hackwell* saith, he is glad to hear it is so, and he is now of the same opinion.

Decided by Question, That Mr. *Rolles* ought to have Priviledge of Parliament, for his goods seised 30 Octob. 5 Jac. and all sithence.

This Committee is adjourned untill Munday, and the Customers to attend.

## The Protestation of the Commons in Parliament on Munday 2. Mar. 1628.

1. **W**Hosoever shall bring in an Innovation in Religion, or by favour or countenance seek to extend, or introduce Poperie or Arminianisme, or other Opinion differing from the true and orthodox profession of our Church, shall be reputed a Capital enemy to this Kingdom and Common-wealth.

2. Whosoever shall counsel or advise the taking or leavying of the Subsidies of Tonnage and Poundage, not being granted by Parliament, or shall be an Actor or an Instrument therein, shall likewise be reputed an Innovator in the Government, and a Capital enemy to the Kingdom and Common-wealth.

3. If any Merchant, or other person whatsoever, shall voluntarily yield or pay the said Subsidie of Tonnage or Poundage, not being granted by Parliament, he shall likewise be reputed a Betrayer of the Liberties of England, and an enemy to the same.



## K I N G S S P E E C H

in the House of PARLIAMENT, Mar.

10. 1628. to Dissolve it.

My LORDS,

**I** Never came here upon so unpleasing occasion, it being for the Dissolving of a PARLIAMENT; therefore many may wonder why I did not rather choose to do this by my Commission; it being the general Maxim of Kings, to lay harsh commands by their Ministers; themselves onely executing pleasing things. But considering that Justice is as well in Commanding of Virtue, as Punishing of Vice, I thought it necessarie to come here to day, to declare to you, my Lords, and all the world, That it was onely the disobedient carriage of the Lower House that hath caused this Dissolution at this time; and that you, My Lords, are so far from being causers of it, that I have as much comfort in your Obedience, manifested by all your carriage towards me, as I have cause to distaste their proceedings. Yet that I may be clearly understood, I must needs say they do mistake me wondrously that think I lay this fault equally on all the Lower House; for I know there are many there, as dutifull Loyal Subjects as any are in the world: I know that it was onely some Vipers

pers among them, that did cast this mist of disobedience before their eyes; although there were some there that could not be infected with this Contagion; insomuch that some by their speaking (which indeed was the general fault on the last day of the House) did shew their obedience. To conclude, my Lords, as those ill-affected persons must look for their reward, so you that are here of the Higher House, may justly claim from me that protection and favour, that a good King bears to his Loyal and Faithfull Subjects and Nobilitie. Now my Lords, execute that which I Command you.

Lord K E E P E R,

**M**Y Lords and Gentlemen of the House of Commons, the KINGS Majestie doth Dissolve this *Parliament*; wherefore you have all free leave to depart to your Residences, &c.

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His MAJESTIES Letter, with Queres  
concerning Ship-money, and the  
Answer thereunto.

To Our trustie and welbeloved, Sir *John Bramston* Knight, Chief Justices of our Bench; Sir *John Finch* Knight, Chief Justice of our Court of Common-pleas; Sir *Humphrey Davenport* Knight, Chief Baron of Our Court of Exchequer; and to the rest of the Judges of Our Courts of Kings Bench, Common-pleas, and the Barons of our Court of Exchequer.

CHARLES R.

**T**Rustie and welbeloved We greet you well. Taking into Our Princely consideration, that the Honor and Safetie of this our Realm of England, the preservation whereof is onely intrusted to Our care, was, and is now more dearly concerned than in late former times, as well by diverse Counsels and attempts, to take from Us the Dominion of the Seas, of which We are sole Lord and rightfull Owner, or Propriator, and the loss whereof would be of greatest danger and peril to this Kingdom, and other our Dominions, and many other wayes; We, for the avoiding of these and the like dangers, well weighing with Our self, that where the good and safety of the Kingdom in general is concerned, and the whole Kingdom in danger, there the charge and defence ought to be born by all the Realm in general; did for preventing so publick a mischief, resolve with Our self, to have a Royal Navie provided, that might be of force and power (with Almighty Gods blessing and assistance) to protect and defend this our Realm, and our Subjects therein, from all such perils and dangers: and for that purpose We issued forth Writs under Our Great Seal of England, directed to all Our Sheriffs of Our several Counties of England and Wales, Commanding thereby all Our said Subjects in every Citie, Town and Village, to provide such a number of Ships, well furnished as might serve for this Royal purpose, and which might be done with the greatest equallitie that could be. In performance whereof, though generally throughout all the Counties of this Our Realm, We have found in Our Subjects great chearfulness and alacritie, which We graciously interpret as a testimonie as well of their dutifull affections to Us and Our service, as of the respect they have to the publick, which well becometh every good Subject; nevertheless, finding that some few, happily out of ignorance what the Laws and Customs of this Realm are, or out of a desire to be eased and freed in their particulars, how general soever the charge be, or ought to be, have not yet paid and contributed the several Rates and Assesments that were set upon them; & foreseeing in our Princely wisdom, that from hence diverse Suits and Actions are not unlikely to be commenced, and prosecuted in Our several Courts at Westminster; We, desirous to avoid such inconveniences, and out of Our Princely love and affection to all our people, being willing to prevent such errors as any of Our  
loving

loving Subjects may happen to run into, have thought fit in a Case of this nature, to advise with you Our Judges, who we doubt not are all well studied and informed in the rights of Our Sovereignie. And because the Trials in Our severall Courts, by the formalities in pleading, will require a long protraction, We have thought fit by this Letter directed to you all, to require your Judgements in the Case, as it is set down in the inclosed Paper, which will not onely gain time, but also be of more Authoritie to over-rule any prejudicate opinions of others in the point. Given under Our Signet at Our Court of White-hall, the Second day of Febr. in the Twelfth Year of our Reign. 1636.

CHARLES R.

**W**Hen the good and safetie of the Kingdom in general is concerned, and the whole Kingdom in danger, Whether may not the KING, by Writ under the Great Seal of *England*, Command all the Subjects of this Kingdom, at their charge, to provide and furnish such number of Ships, with Men, Victuals, and Munition, and for such time as he shall think fit, for the defence and safeguard of the Kingdom from such danger and peril, and by Law compel the doing thereof, in case of refusal or refractoriness?

And whether, in such case, is not the KING the sole Judge both of the danger, and when and how the same is to be prevented and avoided?

CHARLES REX.

### Answer.

**M**ay it please Your most excellent Majestie, We have, according to Your Majesties Command severally, every man by himself, and all of us together, taken into serious consideration the Case, and Questions, signed by your Majestie, and inclosed in your Royal Letter: and we are of opinion, that when the good and safetie of the Kingdom in general is concerned, and the whole Kingdom in danger, Your Majestie may, by Writ under the Great Seal of *England*, Command all the Subjects of this Your Kingdom, at their charge, to provide and furnish such number of Ships, with Men, Victual, and Munition, and for such time as Your Majestie shall think fit, for the defence and safeguard of the Kingdom from such danger and peril: and that by Law Your Majestie may compel the doing thereof, in Case of refusal or refractoriness. And we are also of opinion, That in such Case Your Majestie is the sole Judge, both of the danger, and when and how the same is to be prevented and avoided.

John Brampton.

John Denham.

George Crook.

Robert Barkley.

John Finch.

Richard Hutton.

Thomas Trevor.

Francis Crawley.

Humfrey Davenport.

William Jones.

George Vernon

Richard Weston.

F I N I S.